

Commonwealth Edison Company

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ICC Docket No. 10-0467

Proposed general increase in electric rates

INITIAL BRIEF

ON BEHALF OF THE COALITION TO

REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

REACT

COMPRISED OF:

A. FINKL & SONS, Co.

AUX SABLE LIQUID PRODUCTS, LP

THE CITY OF CHICAGO

COMMERCE ENERGY, INC.

FLINT HILLS RESOURCES, LP

FUTUREMARK PAPER COMPANY

INTEGRYS ENERGY SERVICES, INC.

INTERSTATE GAS SUPPLY OF ILLINOIS, INC.

THE METROPOLITAN WATER RECLAMATION DISTRICT

OF GREATER CHICAGO

PDV MIDWEST REFINING LLC

UNITED AIRLINES, INC.

WELLS MANUFACTURING, INC.

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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**INITIAL BRIEF OF THE COALITION
TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

The Coalition to Request Equitable Allocation of Costs Together (“REACT”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.800), respectfully submits its Initial Brief in the instant proceeding addressing the proposed general increase in electric rates of Commonwealth Edison Company (“ComEd”).

I.

INTRODUCTION¹

The Commission has spoken, but ComEd apparently has not been listening.

The Commission repeatedly and clearly has set out both general and specific expectations for ComEd’s cost allocation and rate design, but ComEd repeatedly has failed to meet those expectations. As a result, ComEd again has claimed in this proceeding that it is entitled massive, disproportionate, unjustified million-dollar plus rate increases from its largest customers, and again improperly has included supply-related costs in its proposed delivery services rates. The Commission should seize this opportunity to build on its prior forceful statements, and unambiguously direct ComEd to meet the Commission’s directives.

¹ This Initial Brief follows the “Common Outline” of issues. The positions stated herein do not necessarily represent the positions of any individual REACT member.

This rate case again raises fundamental questions about accurate cost allocation, particularly with regard to the cost to provide service to ComEd's largest customers, as well as the cost to provide supply-related "customer care" service. The Commission repeatedly has addressed these issues and consistently has directed ComEd to take steps toward allocating delivery services costs accurately and fairly, so that the resulting delivery services rates are cost-based, as required by the Public Utilities Act ("Act"). (*See* 220 ILCS 5/16-108(c).) Consistent with the Act, the Commission has been strongly critical of proposed rates that fail to reflect cost causation, and has declined to adopt such proposed rates when the evidence fails to demonstrate the statutorily required correlation between the cost of service and the proposed rates, and has demanded that ComEd make changes to better reflect cost causation. (*See, e.g.*, ICC Docket No. 07-0566, Final Order dated Sept. 10, 2008, at 206-07, 212-213; ICC Docket No. 08-0532, Final Order dated Apr. 21, 2010, at 38-40, 84-85.) ComEd still has not complied with the Commission's directives, and (again) should be directed to do so in this proceeding.

Setting cost-based rates involves the Commission making two basic determinations: first, the Commission must determine ComEd's revenue requirement in a manner that accurately reflects ComEd's reasonable and prudently incurred costs; second, the Commission must allocate that revenue requirement among the rate classes, according to each class's role in causing those allocated costs.

REACT takes no position on the determination of the revenue requirement, except to express its support of ComEd's right to recover its reasonable and prudently incurred costs as determined by the Commission. REACT instead focuses on accurate allocation of the costs ComEd is entitled to recover, and strongly contests ComEd's proposed method of cost allocation because it fails to produce cost-based rates either for the largest customers or with regard to its

Customer Care Costs. REACT's position on cost allocation is simple: each customer class should pay for the delivery services costs the class causes, no more and no less.² All three REACT witnesses, in addition to several other witnesses, firmly established that ComEd's proposed allocations do not satisfy this requirement. At a conceptual and practical level, ComEd over-allocates costs associated with distribution system assets to the over-10 MW customer classes, assigning costs related to assets that those classes either do not use or use in far lower proportion than ComEd's proposed allocation suggests. The result of ComEd's flawed allocation is a cost study (the Embedded Cost of Service Study or "ECOSS") that would suggest **annual rate increases to its largest customers of 75-171%** over the cost-based rates approved by the Commission in 2005 -- **well over a million dollars per year, per customer**, for the largest of those customers. (*See, e.g.*, Section VII.B, *infra* at pages 19 to 21.)

Feasible and practical solutions to ComEd's misallocations exist. The Commission can establish cost based rates as required by the Act through three primary modifications to ComEd's proposal. Importantly, none of these modifications would reduce ComEd's overall recovery in this proceeding.

- **First, ComEd should be required to allocate the cost of the distribution system assets serving ComEd's largest customer classes in proportion to those class's actual use of those distribution system assets.** The Commission consistently has rejected ComEd's repeated attempts to set rates for these customers based upon an ECOSS that engineering realities and actual usage data have shown does not reflect cost causation. ComEd's proposed "ECOSS-based rates" -- which cannot be accurately referred to as "cost-based" since ComEd did not present sufficient evidence to determine the cost of providing service to its largest customers -- even if "mitigated," would present a massive, unjustified increase for over-10 MW customer classes. **The Commission should compel ComEd to undertake a study to determine the distribution system assets serving the over-10 MW customer classes -- a task that is both feasible and practical.**

² As ComEd witness Mr. Alongi admitted on cross-examination, every prudent and reasonable cost must have been caused by at least one rate class, meaning that the exclusion of any particular cost from the allocation of a class that did *not* cause that cost does not impede ComEd's right to full recovery of its costs. (*See* Tr. 2206:10-20.)

- **Second, the Commission should compel ComEd to allocate all of ComEd's Customer Care Costs based on an embedded cost of service study, adjusted to reflect how those costs are caused.** The Commission repeatedly has criticized ComEd's "switching study" approach to allocating these costs, which relies heavily on a guess regarding how Customer Care Costs may or may not be avoided at some indeterminate future time based on wholly hypothetical customer switching scenarios. **The Commission should direct ComEd to allocate all of its Customer Care Costs according to an embedded cost approach, adjusted to reflect the data that ComEd has provided.**
- **Third, the Commission should retain the existing rate design to collect taxes, and require ComEd to annually update its distribution loss factor.** In order to ensure ComEd's rates send accurate price signals, the Commission should preserve the *status quo* with respect to ComEd's collection of the Illinois Electricity Distribution Tax ("IEDT"), and should require ComEd to update its distribution loss study annually.

These three straightforward steps will move ComEd's delivery services rates toward compliance with the cost causation principles articulated by the Act and embraced the Commission in its prior Orders.

A. REACT

1. REACT's Composition And Participation In Commission Proceedings

REACT is an *ad hoc* group, with diverse members, including some of the largest of ComEd's commercial, governmental, and industrial delivery services customers as well as retail energy suppliers that are interested in providing service to residential and small commercial customers.³ (See REACT Ex. 1.0C at 9:188-191, 10:213:214.) REACT's members are committed to advocating that the Commission ensure accurate, appropriate, and equitable

³ The customer members of REACT currently are: A. Finkl & Sons Company; Aux Sable Liquid Products, LP; the City of Chicago; Flint Hills Resources, LP; FutureMark Paper Company (formerly known as the Alsip Paper Condominium Association); the Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining LLC; United Airlines, Inc.; and Wells Manufacturing Company. All of these REACT customer members participated in the 2007 ComEd Rate Case (ICC Docket No. 07-0566) and the 2008 ComEd Special Investigation Proceeding (ICC Docket No. 08-0532) as REACT members. REACT's supplier members currently are Commerce Energy, Inc.; Integrys Energy Services, Inc.; and Interstate Gas Supply of Illinois, Inc.

allocation of ComEd's costs -- both among its customer classes and between the supply and delivery services components of ComEd's rates. (*See* REACT Ex. 1.0C at 5:88-91.) That is, the REACT members collectively **Request Equitable Allocation of Costs Together**.

REACT was formed after ComEd filed its 2007 Rate Case, to address obvious inaccuracies and inequities in ComEd's proposed allocation of its costs. REACT actively participated in all phases of both the 2007 ComEd Rate Case, ICC Docket No. 07-0566, and the resulting Special Investigation Proceeding, ICC Docket No. 08-0532, presenting substantial expert testimony and argument in support of fair, accurate, and equitable rate design that: (1) avoids penalizing the largest customers with the massive, disproportionate rate increases that would result if their rates were based upon ComEd's fundamentally flawed cost study that fails to reflect accurate cost causation; and (2) allocates Customer Care Costs consistent with principles of cost causation, development of retail electric competition for residential customers, and fair treatment of all customers and retail electric suppliers. (*See* REACT Ex. 1.0C at 12:256-259.)

REACT's over-10 MW (i.e., Extra Large Load) commercial, industrial, and municipal customer-members are each substantial employers in the state, and important members of the community in Northern Illinois that represent a part of the economic engine that drives the larger Illinois economy. (*See* REACT Ex. 1.0C at 5:82-85, 5:96-100.) Rate design issues -- particularly focusing on accurate ratemaking that properly accounts for the actual cost of providing service including, among other things, the costs associated with the serving the customer classes -- are of utmost importance to these customers. (*See id.*)

Each of REACT's retail energy supplier members provides retail energy services to residential and small commercial customers in a number of other North American jurisdictions,

and each is a potential participant in the residential and small commercial retail electric market in the ComEd service territory. (*See* REACT Ex. 1.0C at 10:211-216.) Rate design issues are of critical importance to these suppliers, to ensure a level playing field between retail suppliers and the incumbent supplier, ComEd. (*See* REACT Ex. 1.0C at 10:219-222.) Fair allocation of Customer Care Costs is particularly important. (*See* REACT Ex. 1.0C at 10:229-241.) Inaccurate allocation of Customer Care Costs clearly advantages ComEd. (*See id.*; REACT Ex. 5.0 at 2:22-24.) Inaccurate allocation causes the price for the supply-related component of ComEd's bundled product (against which the suppliers compete) to be cross-subsidized by the delivery services or "wires" side of ComEd's business, which charges rates that all customers, including those of alternative suppliers, must pay. (*See id.*) Improper allocation of supply-related Customer Care Costs to delivery services rates has several negative consequences, including: charging customers who choose to purchase energy from an alternative supplier for costs that should be borne only by customers receiving supply from ComEd; and hampering competition by creating an artificially low, and therefore, distorted, price comparison for ComEd customers who shop for alternative suppliers. (*See id.*) In short, ComEd's improper allocation of its Customer Care Costs harms the competitive market, and thus harms all customers.

2. REACT's Expert Witnesses

REACT has presented three expert witnesses in this case: Bradley O. Fults, Jeffrey Merola, and Harry L. Terhune.

- **Bradley O. Fults.** Mr. Fults is the Managing Principal of Progressive Energy Solutions, LLC, an energy consulting firm that specializes in energy planning, energy pricing, contract negotiations, strategic planning, and other energy matters. Mr. Fults previously testified before the Commission on REACT's behalf in both the 2007 ComEd Rate Case and the resulting Special Investigation Proceeding (his testimony from those proceedings is attached as exhibits to his Direct Testimony in this proceeding). In this proceeding, Mr. Fults has presented both Direct and Rebuttal Testimony (REACT Exhibits 1.0C and

4.0, respectively), focusing on the unjustified and disproportionate rate increases that ComEd proposes for the over-10 MW customer classes.

- **Jeffrey Merola.** Mr. Merola is the Vice President of Intelometry, and leads Intelometry's Business Services Practice, which focuses on wholesale and retail marketing in the electric power and natural gas industries and includes management consulting expertise related to the operations and management of retail energy supply organizations. Mr. Merola also previously testified before the Commission on REACT's behalf in both the 2007 ComEd Rate Case and the resulting Special Investigation Proceeding (his testimony from those proceedings is attached as exhibits to his Direct Testimony in this proceeding). In this proceeding, Mr. Merola has presented both Direct and Rebuttal Testimony (REACT Exhibits 2.0 and 5.0) focusing on the allocation of Customer Care Costs.
- **Harry L. Terhune.** Mr. Terhune is an independent consultant and owner of Terhune Consulting, LLC, which focuses on consultation with electric utilities in relation to planning, operation, and reliability matters affecting their transmission and distribution systems. Mr. Terhune is a licensed Professional Engineer who worked for ComEd from 1967 to 1998, where he held a wide variety of engineering and technical management positions, starting as a field engineer and local area planner and ending as the Manager of the Transmission and Distribution Planning Department. Mr. Terhune has also worked for Mid-America Interconnected Network (MAIN) as its Assistant Executive Director and American Transmission Company LLC as its Vice President-Operations. In this proceeding, Mr. Terhune presented both Direct and Rebuttal Testimony (REACT Exhibits 3.0C and 6.0C, respectively) focusing on the identification of ComEd assets serving the Over-10 MW customer classes and the mechanisms through which ComEd recovers costs from such customers.

B. The Act's Plain Language Requires Equitable Allocation Of Costs

The Act provides the touchstone for determinations of whether an allocation of costs complies with Illinois law. Quite simply, the Act requires that charges for delivery services accurately reflect the costs caused by the customers that collectively are subjected to a particular rate or charge. (*See* 220 ILCS 5/16-108, -108(c).) The Act also requires that delivery services rates not include costs associated with providing supply-related services. (*See id.*; 220 ILCS 5/16-101(d), -102.) In evaluating ComEd's proposed rate design, the Commission must determine whether ComEd has satisfied its burden against these statutory requirements.

1. The Act Requires That Delivery Services Charges Be Cost Based

Section 16-108(c) of the Act requires that ComEd's delivery rates be "cost based" such that the costs charged to customers reflect use of the "facilities and services associated with such costs." The pertinent portion of Section 16-108(c) states:

Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its **charges to its delivery service customers that use the facilities and services associated with such costs**

(220 ILCS 5/16-108(c) (emphasis added).) Thus, the Act requires ComEd to demonstrate a clear link between the delivery services charges for a particular customer class and the costs associated with the facilities and services used to provide service to that particular customer class.

Section 16-108 also requires that:

The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and **shall take into account customer impacts when establishing such charges**. In establishing charges, terms and conditions for delivery services, the Commission **shall take into account voltage level differences**.

(220 ILCS 5/16-108(d) (emphasis added).) Beyond mandating delivery services rates that are based upon the actual facilities used to provide service, this portion of the Act requires consideration of customers impacts and differences in voltage levels.

2. The Act Requires That Customer Care Costs Be Allocated According To Cost Causation Principles And In A Manner That Promotes Customer Choice And Competition

REACT witness Mr. Merola explained that Customer Care Costs "represent those costs ComEd incurs to provide customer service for its delivery and supply customers," and includes activities such as calculating/generating/mailling bills, maintaining customer information, payment and collection, and customer relations. (See REACT Ex. 2.0 at 5:97-105.) In short,

Customer Care Costs are the customer service-related costs that ComEd incurs in all of its dealings with its customers. (*See id.*)

In addition to Section 16-108's requirements (quoted above) requiring that delivery services charges for a customer class be based upon delivery services costs caused by that class, Sections 16-101 and -102 of the Act inform the allocation of Customer Care Costs.

Section 16-101(d) states that:

The Illinois Commerce Commission **should act to promote the development of an effectively competitive electricity market** that operates efficiently and is equitable to all consumers.

(220 ILCS 5/16-101(d) (emphasis added).) The Act further states that:

"Delivery services" means those services provided by the electric utility that are **necessary in order for the transmission and distribution systems to function** so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

(220 ILCS 5/16-102 (emphasis added).)

Thus, supply-related costs are not to be included in ComEd's delivery service rates. A failure to accurately allocate Customer Care Costs to ComEd's supply rates results in artificially inflated delivery services rates, and inaccurate price signals that have anti-competitive effects. (*See* REACT Ex. at 2.0 at 6:112-114; REACT Ex. 5.0 at 12:231-234.) Those inaccurate price signals advantage ComEd as a provider of supply service, and place alternative retail electric suppliers at a disadvantage, because those alternative suppliers are forced to compete against an artificially low ComEd bundled supply rate. (*See* REACT 5.0 at 6:121-124.)

C. The Next Step In The Commission's Strong And Continuing Commitment To Rates Reflecting Cost Causation

The Commission -- through its Orders in recent ComEd's rate cases and the 2008 Special Investigation Proceeding -- has shown a clear, strong, and ongoing commitment to ensuring that

ComEd's rates better reflect cost causation. However, ComEd has yet to fully comply with the Commission's directives.

Recently, the Commission reiterated the importance of ComEd following clear direction given to it by the Commission. Chairman Flores stated:

I can't stress enough how important it is that when the Illinois Commerce Commission makes an Order that **all of the litigants before the Commerce Commission who appear before here follow the Orders that this Commission makes.**

(Bench Session dated November 4, 2010, Tr. 14:15-19 (emphasis added).) As Commissioner O'Connell-Diaz added: "Mr. Chairman, I just agree with the comments that you've enunciated with regard to the need [for] any litigant at the Commission to **follow what the Commission has ordered.**" (*Id.* at 15:20-16:1 (emphasis added).) Commissioner O'Connell Diaz concluded that:

[W]e've been around and around with regard to Cost of Service Studies. . . . So it's kind of puzzling to me that the Company in this instance would not have taken the Commission's concern about that seriously.

(*Id.* at 16:18-17:2.) Likewise, the record now demonstrates that ComEd has not complied with the substance of the clear Commission directives to allocate costs and design rates to reflect cost causation as instructed by the Commission.

**1. ComEd Has Failed To Adhere To
The Commission's Clear Statements
And Directives Regarding Accurate Cost Allocation**

The Commission repeatedly has addressed fundamental issues related to accurate cost allocation, particularly with regard to the cost to provide service to ComEd's largest customers, and to provide supply-related "customer care" service. In so doing, the Commission consistently has directed ComEd to take necessary steps toward allocating delivery services costs accurately and fairly, so that the resulting delivery services rates are cost-based as required by the Act.

a. Costs Allocated To The Over-10 MW Customer Classes

With regard to ComEd's underlying methodology to allocate costs to its largest customers, the Commission consistently has been critical of ComEd's proposed embedded cost of service study or "ECOSS" methodology.

In the 2007 ComEd Rate Case, the Commission recapped the repeated rejection of ComEd's ECOSS methodology as it relates to the largest customers:

Many of the Intervenors take issue with the proposed rates for various classes of customers. Specifically, members of the over 1 MW classes object to the proposed rate increase many times greater than the overall proposed increase of 21%. Representatives of these customer classes contend that the proposed rates change long standing cost relationships between classes without explanation. **In ComEd's most recent previous delivery service case, Docket 05-0597, the ECOSS was not used for setting rates for large customers. In Docket 01-0423, the ECOSS was not used to allocate revenue to the non-residential classes, that received an across the board increase. In Docket 99-0117 classes were defined differently.** Intervenors argue, the expanded use of the ECOSS in this case has not been validated by prior Commission approval on the contested issues in this case.

(ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 212 (emphasis added).)

Notwithstanding the Commission's repeated history of **not** relying upon ComEd's proposed ECOSS for the largest customers, in its 2007 Rate Case, ComEd again proposed ECOSS-based rates for those customers. In response, the Commission stated that:

[T]he Commission finds that the ECOSS fails in several respects to properly allocate significant costs to cost causers and to correctly measure the cost of service to various classes and subclasses.

(ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 213 (emphasis added).)

The Order continued:

Above, we determined that the proper assignment of primary and secondary distribution costs would likely reduce the total cost allocation to customers in the Extra Large Load, High Voltage, and Railroad delivery classes. It would be inconsistent with that finding to accept ComEd's two-step rate increase [for those customer classes].

(*Id. Emphasis added.*) The passage above references the Commission's discussion of primary and secondary costs, which concluded:

Although admitting on cross examination that it did not know how expensive this analysis would be, ComEd, nevertheless argues that the cost of the primary secondary analysis exceeds the benefits because the benefits would flow to a small number of customers. **This overlooks our explicit policy objective of assigning costs where they belong. Only customers using the primary system would see lower rates but the assignment of costs and the rates charged to all classes would be effected. Moreover, the secondary costs assigned to these primary customers substantially change the cost of serving this small number of customers.**

(*Id. at 206 (emphasis added).*) The Commission stated in plain language that to the extent ComEd is able to identify cost causation on a more granular basis, the size of the group of customers who might benefit is irrelevant in light of the Commission's strong commitment to rates reflecting cost causation. Rejecting ComEd's arguments to the contrary, the Commission stated simply:

Having considered the evidence and arguments of the parties, the Commission finds that **the ECOSS is deficient** in not separating and properly allocating primary and secondary service costs.

(*Id. at 207 (emphasis added).*)

As part of its Final Order in the 2007 ComEd Rate Case, the Commission initiated the 2008 Special Investigation Proceeding, ICC Docket No. 08-0532 ("Special Investigation Proceeding"), which presented the Commission an opportunity to further investigate ComEd's rates, including on issues of cost causation. After a nearly two-year proceeding, the Commission criticized ComEd's system of allocating costs in several findings:

The Company's analysis identified several cost accounts that can be separated into primary and secondary components. **REACT indicates that ComEd's analysis fails to explain why other accounts are not similarly divisible.** Staff had an initial concern that the list of accounts did not include any transformer costs which were collectively classified as primary only. The Company argued that the assignment of a transformer to primary versus secondary should be

determined by the voltage of the source-side of the transformer, not the load-side of the transformer.

Based upon ComEd's tariffs and the description of the system provided to us, **we find that ComEd's current method of allocating transformer costs is not appropriate. When the exiting voltage of the transformer is secondary, the transformer can only serve secondary customers and should be allocated as a secondary system cost.**

(ICC Docket No. 08-0532, Final Order dated September 10, 2008, at 38 (emphasis added).)

With regard to use of the secondary system, the Commission stated:

IIEC suggests that the system should be divided, and costs assigned as either primary or secondary costs or allocated as general costs combining percentages of primary and secondary usage. Metra and the CTA articulate another formulation of this concept. **We direct the parties to further review this issue in any subsequent rate proceeding.**

(*Id.* at 39-40 (emphasis added).) The Commission concluded that:

Consistent with the foregoing, we direct ComEd to develop and provide in its next rate proceeding: 1) direct observation or sampling and estimation techniques of ComEd's system to develop more accurate and transparent differentiation of primary and secondary costs; 2) other utilities' methods of differentiating primary and secondary systems and costs; 3) function based definitions of service voltages for facilities other than the line transformers already addressed; **4) an analysis of which customer groups are served by which system service components; and** 5) consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service.

(*Id.* at 40 (emphasis added); *see id.* at 84-85 (ordering ComEd to undertake these analyses).)

Despite these clear statements, ComEd has failed to meet the Commission's expectations related to cost allocation in designing the rates for the over-10 MW customer classes. In the instant proceeding, ComEd seeks approval of essentially the same flawed ECOSS that the Commission strongly criticized in the 2007 ComEd Rate Case and the 2004 Special Investigation. The designer of the ECOSS, ComEd witness Mr. Heintz, stated: **"The basic structure and functioning of the study presented in this proceeding is not different from ComEd's embedded cost of service studies as filed in prior dockets."** (ComEd Ex. 15.0R, at

1:20-2:24, 6:117-18 (emphasis added).) This ECOSS does not comply with the Commission’s “explicit policy objective of assigning costs where they belong,” and completing “an analysis of which customer groups are served by which system service components.” (See *infra* Sections VII.C.1.b.(ii)(a), c, and e (pages 26-41 and 42-44), VII.C.1.k and l (pages 59-62, VII.D. (62-64, VIII.C.4(a)(i), (b) (pages 66-70.)

b. Allocation Of Customer Care Costs

With respect to the allocation of Customer Care Costs, the Commission consistently has criticized virtually the same avoided cost study (i.e., “Switching Study”) and resulting conclusion that ComEd proposes in the present case. ComEd’s current Switching Study concludes that less than 1% of ComEd’s Customer Care Costs should be allocated to the supply function. (See ComEd Ex. 19.1; REACT Ex. 2.0 at 8:165-167.) Yet, the Commission has criticized ComEd’s allocation approach and ComEd’s allocation percentage for several years.

In the 2007 ComEd Rate Case, the Commission cast doubt on ComEd’s 1% allocation to supply under a switching study approach:

The Commission believes that some percentage of customer care costs may well be attributable specifically to bundled supply customers. This allocation could substantially reduce costs assigned to distribution customers while increasing bundled supply rates. The Commission believes that it is reasonable to investigate the allocation of customer care costs.

(ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 207-208 (emphasis added).)

Accordingly, the Initiating Order in the Special Investigation Proceeding stated:

ComEd is directed to provide an **updated cost of service study** that . . . (2) analyzes the cost of providing Customer Care to a customer taking supply from an alternative supplier versus the cost of providing Customer Care to a customer taking supply from ComEd . . .

(ICC Docket No. 08-0532, Initiating Order dated September 10, 2008, at 2 (emphasis added).)

Notably, the Commission directed ComEd to update its “cost of service study” -- for all other

matters on which ComEd allocated costs, including all of the other items being addressed in the Special Investigation Proceeding, ComEd used an embedded cost (*i.e.*, Allocation Study) approach to allocation. (*See id.*) Yet, in the Special Investigation Proceeding, ComEd persisted with using an avoided cost (*i.e.*, Switching Study) approach for one and only one subject -- the Customer Care Cost allocation. Once again, ComEd presented an allocation of less than 1% of Customer Care Costs to the supply function. Accordingly, the Commission, again, though more pointedly, questioned that result, stating:

If the Commission's goal is to assign costs to the cost causers, it is difficult to imagine that less than 1% of ComEd's customer care costs are caused by supply related matters.

(ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67 (emphasis added).)

ComEd's reluctance to use consistent methodologies was not lost on the Commission, which noted the analytical consistency of the allocation study approach advocated by REACT and the embedded cost allocation methodology used generally by ComEd (except on Customer Care Costs):

... REACT's methodology is consistent with an embedded cost methodology. Because the record does not contain information to calculate the appropriate allocator, this is an issue appropriate for a subsequent rate proceeding. **To facilitate the further analysis of these issues, ComEd is directed to perform an embedded cost study for these costs and present it for consideration and discussion in its next rate proceeding.**

(ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68 (emphasis added).)

In this case, ComEd again recommends that the Commission adopt a Customer Care Cost allocation based on its Switching Study that emphasizes purported avoided cost. That study is essentially the same as the study whose results the Commission found "difficult to imagine" in the Special Investigation Proceeding -- **and it comes as no surprise that ComEd yet again**

allocates less than 1% of Customer Care Costs to the supply function under its current avoided cost approach study.

Bowing minimally to clear Commission directives, ComEd has also presented an embedded cost study (i.e., an “Allocation Study”) in this case. However, ComEd’s Allocation Study admittedly is limited to just a fraction of the Customer Care Costs that ComEd actually incurs. (*See* Tr. 1319:1-9, 1323:3-11.) Both REACT and Staff criticize ComEd’s limitation as arbitrary and improper. (*See* REACT Ex. 5.0 at 6:112-116; Staff Ex. 28.0 at 5:102-8:190.)

The Commission has made it clear that the Allocation Study approach is preferable and more likely to result in accurate cost allocation. (*See* ICC Docket No. 08-0532, Final Order dated April 21, 2010 at 67-68.) REACT witness Mr. Merola provided additional extensive, detailed testimony on this subject in this proceeding. (*See, e.g.*, REACT Ex. 2.0 at 8:160-9:177; REACT Ex. 5.0, 9:179-16:325.) Mr. Merola also explained in considerable detail how ComEd arbitrarily excluded a large portion of Customer Care Costs from the amounts it chose to examine for allocation, and explained in detail the necessary adjustments to ComEd’s Allocation Study to reach a result of accurate cost allocation. (*See* Section VII.C.1.j(i)-(iii) at pages 46-59.)

**2. REACT Respectfully Requests
That The Commission Enforce Its Clear
Directives By Adopting REACT’s Proposals**

REACT’s request for adjustment of rates to reflect the actual usage of the distribution system, a survey of distribution system assets serving the over-10 MW customer classes, and an appropriate allocation of supply-related Customer Care Costs all would advance the cost causations goals articulated by the Commission in the 2007 ComEd Rate Case and the Special Investigation Proceeding Final Orders.

The process has been iterative, but ComEd has made limited incremental changes in the information that it has provided. As a result, some of the actual data necessary to take the next

step forward now has been produced by ComEd, and it is clear that the additional information needed is within ComEd's possession and can feasibly be produced without undue burden to ComEd. That information includes:

- Information about the impact that the Extra Large Load customer class usage has on the single-/two-phase and 4 kV distribution systems;
- Information about the engineering realities of ComEd's distribution system provided by REACT expert witness Mr. Terhune; and
- Additional information possessed by ComEd -- but as of yet, unproduced -- about the distribution system assets serving the Extra Large Load customer class.

Implementation of REACT's proposals would result in rates that more accurately reflect the associated underlying cost of distribution facilities -- thus advancing the Commission's "explicit policy objective of assigning costs where they belong." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 38.)

D. Relief Requested

REACT respectfully requests that the Commission grant the following relief:

- **Increase the rates of the over-10 MW customer classes by no more than the system average.** REACT has demonstrated that ComEd's current allocations for primary line and primary transformers do not reflect cost causation by the Over-10 MW customer classes due to extremely low use of single-/two-phase primary distribution line and 4 kV transformers. (See Sections VII.C.1.b.(ii)(a), c., and e. at pages 26-41 and 42-44, herein.) Until the Commission has a full opportunity to hear testimony on adjusting allocators related to primary line and primary transformers, the Commission should restrict any increases to the currently over-allocated Over-10 MW classes to the system average. This approach is consistent with the Commission's Final Order in the 2007 Rate Case. As described in Sections VII.B, VII.C.1.i, VII.D, and VIII.B (pages 19-21, 61-62, and 65) restricting the increase to system average is especially important given the massive, unjustified increases that ComEd sought to impose in the 2007 Rate Case and continues to attempt to impose under its inappropriately named "mitigation plan."
- **Order ComEd to undertake a study of the distribution system assets serving the over-10 MW customer classes.** The Commission should build on its strong commitment to cost causation principles from the 2007 Rate Case and Special Investigation Proceeding Final Orders and require ComEd to undertake a study of the distribution system assets that provide service to the Over-10 MW customer classes. (See Section VII.C.1.c at pages 31-41 herein.) REACT establishes that: (1) there is a

disconnect between ComEd's current allocations and cost causation based on actual usage information from ComEd in this case; (2) ComEd has the ability to undertake the study (as evidenced by its primary/secondary study, discussed in Section VII.C.1.b(i)(a)); and (3) ComEd's arguments as to why it should not undertake this study were rejected by the Commission when offered with regard to the primary/secondary split and are without merit.

- **Adopt the Allocation Study, with the revisions proposed by Mr. Merola, to allocate Customer Care Costs between the supply and delivery functions.** Now that the Commission can fully compare the embedded and avoided cost allocations side-by-side, REACT demonstrates that the embedded ("Allocation Study") approach best reflects cost causation. (See Section VII.C.1.j at pages 46-59 herein.) REACT also has shown that ComEd should have included indirect O&M and capital costs in its Allocation Study. Finally, REACT witness Mr. Merola provided several adjustments to the Allocation Study that REACT proved enhanced the study's reflection of cost causation.
- **Retain the *status quo* for how ComEd charges customers for the Illinois Electricity Distribution Tax.** REACT shows that there is no valid reason for ComEd to change its approach, but there are significant harms and a lack of cost causation support for changing to a per kWh flat rate. (See Sections VII.C.1.h and VIII.C.5 at pages 44-46 and 70 herein.)
- **Require ComEd to update the Commission on its Distribution Loss Factor and underlying study yearly.** Although REACT does not contest ComEd's ultimate Distribution Loss Factors ("DLFs") or underlying study, REACT demonstrates the alarming swings in DLFs since the 2005 Rate Case -- and even between the initial filing and later filings in the present case. (See Section VIII.C.6 at pages 70-72 herein.) Although REACT understands that DLFs can and do fluctuate, the enormous fluctuations reflected in ComEd's adjustments demonstrate the need for greater Commission monitoring and oversight. REACT establishes that the Commission should monitor DLFs on a yearly basis in order to avoid enormous fluctuations.

VII.

COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

Despite clear and pointed Commission Orders mandating significant changes, ComEd -- by its own admission -- relies essentially on the same faulty Embedded Cost of Service Study ("ECOSS") approach that the Commission criticized in the 2007 ComEd Rate Case and the resulting Special Investigation Proceeding. (See Section I.C.1.a *supra* at pages 10-14.) The designer of the ECOSS, ComEd witness Mr. Heintz, stated: "The basic structure and functioning

of the study presented in this proceeding is not different from ComEd's embedded cost of service studies as filed in prior dockets." (ComEd Ex. 15.0R, at 1:20-2:24, 6:117-18.) ComEd's retread of its ECOSS, if accepted by the Commission, would impose unjustified and disproportionate rate increase upon customers in the over-10 MW customer classes, who have done nothing to deserve such massive increases. (See REACT Ex. 4.0 at 6:131-135; *see also* REACT Ex. 1.0C at 6:113-119, 12:264-20:521 (explaining flaws with ECOSS as identified in recent Commission Orders).)

ComEd repeatedly has balked at providing appropriate information to determine whether its proposed rates for the over-10 MW customer classes are "cost based," as required by the Act. (See REACT Ex. 3.0C at 23:563-27:567; REACT Ex. 6.0C at 3:60-65, 4:71-76, 6:130-7:150, 22:503-32:757.) However, to the extent that ComEd has provided information regarding the distribution system assets serving the Extra Large Load customer class, REACT's analysis of that information has unequivocally demonstrated that the allocators ComEd used to assign costs to the class inaccurately reflect the class's actual use of (and thus cost causation for) those types of distribution system assets. (See REACT Verified Offer of Proof at 5-7; Sections VII.C.1.b(ii)(a), c., and e. *infra* at pages 26-41 and 42-44.) Simply put, ComEd has not justified any additional increase to the over-10 MW customer classes in light of both previous Commission Orders and the evidence in this proceeding. As a result, the Commission should not increase the rates for the over-10 MW customer classes beyond the system average increase that the Commission deems appropriate.

B. Uncontested Issues

Although REACT, ComEd, and other parties disagree on many issues relating to ComEd's proposed rates for the over-10 MW customer classes, it appears that neither ComEd nor any other party contests certain issues involving the financial impact of the proposed rate

increases on the over-10 MW customer classes and certain characteristics of and assumptions about recoverability of Customer Care Costs.

- **Rate Increase Impact For Over-10 MW Customers**

As detailed in Tables 1 and 2 of the Rebuttal Testimony of REACT witness Mr. Fults, ComEd proposes to increase the delivery charges to each member of the Extra Large Load customer class **by 75.2%-84.3%** (depending on customer size), and every member of the over-10 MW High Voltage class **by 29.0%-46.7%** (depending on customer size) over rates from the ComEd's 2005 Rate Case, ICC Docket No. 05-0597. (*See* REACT Ex. 4.0 at 8:154-159 (Table 1), 10:189-194 (Table 2).)

This means that if the Commission were to accept ComEd's ECOSS and present allocations, rates for the Extra Large Load customer class will increase from over \$220,000 to over **\$1.875 million per year per customer**, depending on load size. Likewise, over-10 MW High Voltage customers will see increases ranging from nearly \$40,000 to over **\$460,000 per customer per year**, depending on load size, over the rates from ComEd's 2005 Rate Case, ICC Docket No. 05-0597. (*See* REACT Ex. 4.0 at 7:137-8:160.)

Finally, even if ComEd seeks no further rate base increases in its next two rate cases and the Commission does not alter ComEd's ECOSS, Extra Large Load customer class members will see their rates increase from between **160%-171%** over rates from ComEd's 2005 Rate Case, ICC Docket No. 05-0597, which involves a dollar increase ranging from just under \$500,000 to nearly **\$4 million per year per customer**, depending on customer size. (*See* REACT Ex. 4.0 at 2:27-34, 8:165-171.)

Neither ComEd nor any party other than REACT presented any testimony regarding the impact of ComEd's proposed rates on Extra Large Load or High Voltage class customers, nor

did ComEd or any other party contest the calculations undertaken by Mr. Fults. (*See* Tr. 408:15-19, 410:2-12, 410:21-411:1, 412:16-414:6.) Therefore, the Commission should fully credit Mr. Fults's calculations.

- **Customer Care Costs**

The parties are in substantial agreement about a number of issues regarding Customer Care Costs as well. ComEd and REACT agree that Customer Care Costs “represent those costs ComEd incurs to provide customer service for its delivery and supply customers,” and includes activities such as calculating/generating/mailling bills, maintaining customer information, payment and collection, and customer relations. (*See, e.g.*, REACT Ex. 2.0 at 5:97-105; ComEd Ex. 19.0R at 5:111-6:121; *see also* Tr. 1314:13-1315:12.)⁴ Furthermore, the parties agree that some of the Customer Care Costs are incurred to support the delivery function, some are incurred to support the supply function, and that the costs should be allocated based on cost causation principles. (*See* REACT Ex. 5.0 at 13:258-264 (highlighting importance of cost causation); Tr. 1315:13-15, 1316:12-21 (ComEd); Tr. 1182:20-1183:8, 1183:20-1184:1 (Staff witness Mr. Rukosuev).) ComEd agrees with REACT that Customer Care Costs should, consistent with cost causation principles, be set in a way that encourages development of retail electric competition. (*See* Tr. 1317:4-13; REACT Ex. 5.0 at 12:231-234; REACT Ex. 2.7, at 9:174-178; REACT Ex. 2.8, at 5:98-100; REACT Ex. 2.9 at 5:85-86, 9:176-178; REACT Ex. 2.10, at 19:377-379.) Finally, the parties agree that ComEd has filed two studies, its “Allocation Study,” which is based on allocating costs in a manner consistent with embedded cost principles, and its “Switching Study,” which is based on an avoided cost methodology. (*See* REACT Ex. 2.0 at 9:182-186, 16:329-332; ComEd Ex. 19.0R at 7:164-8:181; Staff Ex. 12.0 at 26:609-620.)

C. Contested Issues

1. Embedded Cost of Service Study Issues

REACT incorporates by reference its discussion *infra* in Section I.C.1.a at pages 10 to 14 regarding ComEd's failure to abide by the Commission's statements and directives related to ComEd using its ECOSS methodology to allocate costs to its largest customers.

a. Class Definitions

(ii) Non-Residential Classes

The essence of the primary/secondary split is an attempt to satisfy the Commission's "explicit policy objective of assigning costs where they belong." (ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 206.) The Special Investigation Proceeding Final Order required ComEd to, in this rate case, take "consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service." (ICC Docket No. 08-0532, Final Order dated Apr. 21, 2010, at 40.) Furthermore, as the Commission has long recognized, one of the purposes (if not the most important purpose) of defining rate classes is the recognition that each class uses distribution system assets in a different proportion, and cost based rates require an understanding of how different classes use the distribution system. (*See, e.g.,* ICC Docket No. 05-0597, Final Order dated July 26, 2006, at 195-196 (rejecting ComEd request to eliminate over-10 MW customer class because of different cost basis for serving largest customers).)

Creation of a primary class or primary subclasses within ComEd's current class definition system is a positive step toward rates based on full cost causation. The information elicited at the evidentiary hearing and in discovery demonstrates, however, that in addition to any new class

⁴ Furthermore, no party disputes that ComEd is entitled to full recovery of its prudent and reasonable costs; in other words, the question presented is strictly one of allocation.

definitions, the Commission should still order an investigation into the distribution system assets serving the Over-10 MW customer classes (or the any successor classes) and set rates for the class(es) based on an accurate assessment of the costs the class(es) cause.

The parties are split about how to address the Special Investigation Proceeding directive. Both the Illinois Industrial Energy Consumers (“IIEC”) and the Commercial Group (“CG”) have presented rate classifications reflecting a primary/secondary split using rate classes or subclasses. (*See, e.g.* IIEC Ex. 3.2, CG Ex. 1.3.) ComEd does not recommend creation of a primary class or primary subclasses, although it has offered a “preferred exemplar” with a primary class, and created additional ECOSs reflecting primary/secondary proposals from IIEC and CG. (*Compare* ComEd Ex. 75.1 (proposal without primary distinction) *with* ComEd Exs. 75.2-75.4 (containing primary/secondary distinctions); IIEC Ex. 3.1 (ComEd taking position that it does not recommend primary subclass).)

REACT is neutral as to which of the three primary/secondary approaches best reflects cost causation and achieves the Commission’s directives from the Special Investigation Proceeding. However, REACT witness Mr. Terhune explained that the primary/secondary split is a proxy for cost causation; an additional step that would better accomplish the Commission’s directives and goals would be to conduct a study of distribution system assets serving the over-10 MW customer classes based on the methodology of ComEd’s primary/secondary study. (*See* REACT Ex. 3.0C at 10:480-21:514, 27:639-657; REACT Ex. 6.0C at 35:806-40:934.) Mr. Terhune testified that the mandate from the Special Investigation Proceeding Final Order upon which the parties base their primary/secondary conclusions is best fulfilled with a study of the distribution system assets serving, rather than a single primary/secondary demarcation. (*See* REACT Ex. 6.0C at 38:880-892.)

Thus, to accomplish the goal set out in the Special Investigation Proceeding Final Order, REACT respectfully requests that the Commission order a study of distribution system assets serving the over-10 MW customer classes in addition to the first step of redefining the non-residential classes to reflect use of the secondary system.

b. Primary/Secondary Split

(i) Appropriate Methodology/Compliance with Docket No. 08-0532 [the Special Investigation Proceeding]

REACT incorporates by reference its discussion *infra* in Section I.C.2.a. and b. at pages 10 to 17 regarding ComEd's failure to abide by the Commission's statements and directives related to ComEd using its ECOSS methodology to allocate costs to its largest customers.

(a) Functional Identification of Costs

The Commission should compel ComEd to abide by the terms of the Final Order in the Special Investigation Proceeding, and analyze the assets used to serve the over-10 MW customer classes. The Special Investigation Order required, in part, that ComEd develop:

function based definitions of service voltages for facilities other than the line transformers already addressed [and] **an analysis of which customer groups are served by which system service components.**

(ICC Docket No. 08-0532, Final Order dated Apr. 21, 2010, at 40 (emphasis added).)

ComEd tendered ComEd Exhibit 21.5 in this proceeding purportedly to address both of those mandates. (See ComEd Ex. 21.0 at 27:493-491, 28:507-509.) However, ComEd Exhibit 21.5 is nothing more than a first step toward rates reflecting cost causation for ComEd's largest customers, rather than a full accomplishment of that goal. (See Section VII.C.1.a(ii) *supra* at pages 26-31.) That is, ComEd's functional identification of costs -- along with other aspects of ComEd's primary/secondary study in response to the Special Investigation Proceeding -- should be viewed as merely a "proof of concept" that ComEd is capable of identifying the use of its

distribution system assets. (*See, e.g.*, REACT Ex. 6.0C at 39:896-40:934, 30:696-32:745.) As ComEd itself acknowledges, it was capable of -- and, in fact, did -- assign costs, including both direct and shared costs, to a customer class, namely the exemplar primary class based upon actual usage of the facilities. (*See id.* at 28:507-509.)

The study of distribution system assets serving the over-10 MW customer classes is a necessary step toward rates based on full cost causation. (*See* REACT Ex. 3.0C at 21:506-514; REACT 6.0C at 39:896-905; Section VII.C.1.c *infra* at pages 31-41.) ComEd Exhibit 21.5 demonstrates that ComEd **can** practically and feasibly identify the distribution system assets serving a particular class or group of customers. (*See, e.g.*, REACT Ex. 3.0C at 20:487-21:504.) ComEd conducted an investigation, based on several observation and sampling techniques, into distribution system assets serving primary service points. (*See* ComEd Ex. 21.5.) ComEd's study was not without its flaws and as other parties have pointed out, there is certainly room for improvement. (*See, e.g.*, Staff Ex. 10.0 at 19:448-28:654 (criticizing lack of direct observation and faulty assumptions and sampling techniques).) Nevertheless, Mr. Terhune testified that the concepts and basic methodology that ComEd used to create the primary/secondary study demonstrates that ComEd can undertake a similar (although improved) study of distribution system assets serving the over-10 MW customer classes. (*See* REACT Ex. 3.0C at 20:480-21:514, 24:574-27-657, REACT Ex. 6.0C at 30:695-33:759; Sections VII.C.1.a(ii), c., and e *infra* at pages 26-41 and 42-44.)

In the 2007 Rate Case, ComEd argued that a primary-secondary split would be "complex" because ComEd did not track its costs in the manner that parties to the case requested that ComEd allocate its costs. (*See, e.g.*, Tr. 2189:1-20.) Nonetheless, after litigating the issue as part of the Special Investigation Proceeding, the Commission compelled ComEd to undertake

the primary/secondary study because it would make ComEd's rates more reflective of cost causation. (See ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 38-40, 84-85.) Finally, as ComEd conceded, the Commission approved ComEd's use of sampling techniques to look at individual distribution system assets to determine estimates for the circumstances for entire classes. (See Tr. 2195:4-8.) Similar techniques can, and should, be used to establish the cost of the facilities used to provide service to the over-10 MW customer classes. (See REACT Ex. 6.0C at 30:695-33:759.)

ComEd can undertake a study that would connect cost causation and ComEd's rates for its over-10 MW customer classes. It should be ordered to do so.

(ii) Other Primary/Secondary Split Issues

(a) 4 kV Asset Allocation

The Act requires that delivery services rates be cost-based, reflecting the distribution system assets in service used to provide delivery service. (See 220 ILCS 5/16-108(c).) The Commission has been strongly critical of rates that do not reflect cost causation, and has directed ComEd to redo its rates when it has found that the rates do not reflect cost causation. (See, e.g., ICC Docket No. 07-0566, Final Order dated September 10, 2008, 206-207, 212-213; ICC Docket No. 08-0532, Final Order dated April 21, 2010, 38-40, 84-85.) REACT incorporates by reference its discussion *infra* in Sections I.C.1.a *supra* (at pages 10-14) and VII.C.1.c *infra* (at pages 31-41) regarding the cost causation principles in the Act that have been emphasized by the Commission.

ComEd repeatedly admitted in the context of this proceeding that rates should reflect cost causation, and should accurately represent the cost causation by the ratepayers -- at the risk of setting improper price signals and creating inefficiencies if those principles are abandoned. (See ComEd Ex. 14.0R, at 4:91-6:115; Tr. 383:2-385:19 (ComEd witness Dr. Hemphill), 2133:14-

2134:10 (ComEd witness Mr. Alongi).) Given the Act's requirements and the Commission's willingness to require ComEd to study cost causation for certain components of its system, it is beyond dispute that to the extent that information is readily available regarding the causation, that information can and should be used to adjust ComEd's cost allocations and resulting rates. However, that is not what ComEd has done. Instead of relying upon this hard data for the over-10 MW customer classes, ComEd has assigned costs based upon the accounting assumptions that underlie its ECOSS. (*See* Tr. 2134:11-16, 2146:9-16, 2164:8-14 (arguing that Part 285 is only requirement for utility cost studies); Tr. 2184:19-2185:4; *see also* REACT Ex. 6.3 (ComEd Responses to REACT Data Requests 6.20, 6.24, 6.25, 6.29, not identifying costs beyond USOA accounting).) REACT respectfully requests that the Commission direct ComEd to follow the Commission's prior Orders, to analyze the assets used to provide service to the over-10 MW customers, and to use that data to allocate the costs ComEd recovers in its rates.

Based on the hard evidence of the Extra Large Load customer class's actual usage demand for 4 kV electricity, ComEd plainly has failed to allocate 4 kV assets in proportion to the way in which the class uses 4 kV distribution system assets. (*See* REACT Verified Offer of Proof at 5-7; *see also* Section VII.C.1.e *infra* at pages 42-44 (discussing 4 kV line allocation).)⁵

⁵ The Commission's Rules of Practice explicitly provide that the record in Commission proceedings "shall include" an Offer of Proof. (83 Ill. Admin. Code 200.700(4).) That Rule follows directly from and mirrors exactly the definition of the "record in contested cases" set forth in the Illinois Administrative Procedure Act, which definition is explicitly referenced in the Public Utilities Act's provision articulating the contents of the record in a Commission proceeding. (*See* 5 ILCS 100/10-35(4); 220 ILCS 5/10-103.) REACT witness Mr. Terhune was prepared (but not permitted) to testify on January 14, 2011 about analysis he performed on ComEd's Response to Data Request ALJ-OTR 1, served by ComEd on Thursday, January 13, 2011. (*See* REACT Verified Offer of Proof at 1.) As identified in multiple sections of this brief, REACT's Verified Offer of Proof and exhibits thereto provide new and relevant information that offers the Commission insight into the ultimate issues in this proceeding, and therefore should be fully included and credited in the record, and considered by the Commission in its decision. (*See id.* at 5-7.)

This obvious misallocation is representative of the errors inherent in the way ComEd has continued to construct its flawed ECOSS-based rates, and underscores the need to direct ComEd to undertake the more rigorous analysis necessary to develop cost-based rates. In the meantime, this defect, among many others, justifies assigning no more than a system-average increase to the over-10 MW customer classes.

For the Extra Large Load customer class, ComEd has provided a subset of exactly the type of information necessary to appropriately allocate these costs to this customer class. Currently, ComEd allocates costs for those distribution system assets based on coincident peak (“CP”) or non-coincident peak (“NCP”) demand, rather than on class usage of those distribution system assets. (*See* Tr. 2184:19-2185:4.) ComEd previously has stated that use of NCP and CP allocators are the best estimate of each class’s usage of those assets. (*See id.*; Tr. 2134:11-16, 2146:9-16, 2164:8-14 (arguing that Part 285 is only requirement for utility cost studies); Tr. 2184:19-2185:4; ComEd's Verified Response to REACT Verified Petition for Interlocutory Review of December 10, 2010 Ruling, at 6; *see also* REACT Ex. 6.3 (ComEd Responses to REACT Data Requests 6.20, 6.24, 6.25, 6.29, not identifying costs beyond USOA accounting).) However, the actual data regarding the usage of these distribution system assets is available, and should be incorporated into the allocation of costs to the over-10 MW customer classes.

REACT witness Mr. Terhune explained in pre-filed testimony why these allocators over-allocate costs to the over-10 MW customer customer classes, but, as of the filing date for Staff/Intervenor Rate Design Rebuttal Testimony, ComEd had refused to provide evidence about the distribution system assets serving the Extra Large Load customer class to confirm Mr. Terhune’s argument. (*See* REACT Ex. 6.0C at 5:100-115.)

However, in its response to Data Request ALJ-OTR 1 -- served during the evidentiary hearing -- ComEd finally produced some information about the distribution system assets provided to 45 of the 57 Extra Large Load class customers under “Rider NS,” which ComEd uses to recover for certain distribution system assets not covered by Standard Service rates, *i.e.* Rate RDS. (See REACT Cross Ex. 25; Ill. C.C. No. 10, Original Sheets 277-280 (Rider NS section of ComEd Schedule of Rates).) ComEd’s response to Data Request ALJ-OTR 1 included information about the non-standard and standard service facilities used to serve those 45 Extra Large Load customers, and included information about the capacity of all of the listed distribution system assets. (See REACT Cross Ex. 25; REACT Verified Offer of Proof at 5-7; Affidavit of Harry L. Terhune In Support of REACT Verified Offer of Proof at ¶¶ 16-17.) The new information shows that only 0.7% of the capacity of the distribution system assets serving those 45 customers -- a good and reasonable proxy for the class’s actual demand -- relies on the 4 kV system. (See REACT Cross Ex. 25; REACT Ex. 6.5; *see also* REACT Verified Offer of Proof at 6 (citing Affidavit of Harry L. Terhune at ¶ 16).) This completely undermines ComEd’s proposed ECOSSE-based methodology, which allocates these costs based on allocators related to class CP or NCP. (See ComEd Exs. 75.1-75.4.) The Commission should reject ComEd’s proposed CP and NCP allocators, and instead assign no more than a system-average increase to the over-10 MW customer classes.

REACT notes that ComEd’s response to ALJ-OTR 1 validates Mr. Terhune’s analysis in pre-filed testimony.⁶ Mr. Terhune testified that 4 kV distribution system assets are not used to

⁶ComEd did not cross-examine Mr. Terhune regarding his substantive analysis about the ComEd distribution system or the use of distribution system assets by the Extra Large Load class. Following the presentation of Mr. Terhune’s analysis contained in REACT Ex. 6.5, REACT made Mr. Terhune available to testify, but he was not permitted to do so, and ComEd did not seek to further cross-examine him. (See Tr. 1660:6-16, 1672:13-1688:5.)

serve the Extra Large Load class at Standard Service, and would generally be recovered using Rider NS for non-Standard Service. (See REACT Ex. 3.0C at 17:411-414, 17:421-427, 18:450, 19:455, 21:516-23:558, REACT Ex. 6.0 at 11:247-15:332, 19:421-425, 27:620-629.) ComEd's response to Data Request ALJ-OTR 1 corroborates and confirms Mr. Terhune's conclusion that a *de minimis* portion of the 4 kV system is used to serve the Extra Large Load class. (See REACT Cross Ex. 25.)

Both in the current case and historically, ComEd has lumped 4 kV distribution system assets in Primary Line and Primary Transformer Uniform System of Accounts ("USOA") accounts, both of which include distribution system assets that operate at higher voltages and that are used more extensively by the Extra Large Load customer class. Thus, unless and until ComEd separately breaks out its 4 kV distribution system assets into a separate category, it is difficult to adjust the Primary Line and Primary Transformer allocators to reflect the actual use of the Extra Large Load customer class. In the 2007 Rate Case, the Commission held: "the proper assignment of primary and secondary distribution costs would likely reduce the total cost allocation to customers in the Extra Large Load, High Voltage, and Railroad delivery classes." (ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 213.) As a result, the Commission refused to set the rates for those customer classes at the ComEd ECOSS-based rates in that proceeding, and rejected ComEd's proposal to have a two-step move towards those ECOSS-based rates. (See *id.*)

Because there is insufficient evidence and testimony in the record in the instant proceeding regarding the exact downward adjustments needed to the allocators for the USOA accounts containing 4 kV distribution system assets, the Commission should limit the over-10 MW customer classes to a system average increase. (See, e.g., REACT Ex. 6.0C at 32:748-757.)

A system average increase in this case would be consistent with the Commission's adoption of a "mitigation plan" in the 2007 Rate Case for the stated purpose of allowing resolution of the primary/secondary split issue in future proceedings. (*See id.*) Such an approach also would be similar to the way in which the Commission assigned an "across the board" increase to non-residential customers in the 2001 Rate Case. (*See* ICC Docket No. 01-0423, Final Order dated March 28, 2003, at 137.) Similarly the Commission should, in ComEd's next rate case (or any relevant interceding proceedings), direct parties to address how allocators for these distribution system assets should be altered to reflect the evidence ComEd has provided and REACT has analyzed that more accurately depicts system usage. (*See* REACT Verified Offer of Proof; *see also* Section VII.C.1.c *infra* at pages 31-41.)

The assumptions upon which ComEd proposes to allocate costs to the over-10 MW customer classes have been shown to be wrong. Unless and until ComEd provides sufficient information to allow the parties to fully litigate the ramifications of the actual usage of facilities and services upon the proposed allocation of costs, ComEd should not be able to charge above the system average increase for these classes. (*See* REACT Ex. 6.0C at 32:748-757.)

**c. Investigation of Assets Used
To Serve Extra Large Load Customer Class⁷**

Both the Act and the Commission's previous Orders require cost based rates. In particular, delivery services rates must be based on the costs of the distribution system assets serving the customer class paying a particular rate. (*See* 220 ILCS 5/16-108(c).) In order to set the cost based rates for the over-10MW customer classes as required by the Act, it is necessary to understand which distribution system assets are used to serve those classes. (*See* Sections VII.C.1.b(ii)(a), and e *supra* at pages 26-31, 42-44.) REACT respectfully requests that the

Commission compel ComEd to undertake an analysis of the distribution system assets serving the over-10MW customer classes, using ComEd's primary/secondary study as a template and starting-point for further investigation. (*See* Section VII.C.1.b.(i)(a) at page 24.)

ComEd has both the capacity and institutional ability to conduct such a study, as evidenced by ComEd's primary/secondary split study, as well as other information that it has produced in the instant proceeding. (*See, e.g.,* REACT Ex. 6.0C at 39:896-40:934, 30:696-32:745.) Consistent with its rulings in the 2007 Rate Case and the Special Investigation Order, the Commission should compel ComEd to compile the information necessary to enable the Commission to establish cost-based rates that reflect the distribution system assets used to provide service to the over-10 MW customer classes. The basis for mandating such a study is further informed by an understanding of (1) Standard Service, (2) required service or "non-Standard Service," (3) the disconnect between the distribution system assets serving over-10 MW customers and ComEd's proposed rates, and (4) ComEd's capacity to undertake the study. Each of those issues is discussed further below.

(i) Standard Service

ComEd has developed a concept of "Standard Service," which is defined as the distribution system assets required to provide a customer's entire demand for electric power and energy at a single point of service. (*See* Ill. C.C. 10, Original Sheet 155.) This term is well-known within the ComEd engineering community. (*See* Tr. 1701:7-11.) ComEd has used the concept of and assumptions about "Standard Service" to complete certain regulatory tasks, such as conducting its distribution loss study. (*See* Tr. 1697:15-1698:10, 1701:17-1702:13; ComEd Ex. 34.1.) REACT Witness Mr. Terhune, a former ComEd engineer, testified that each customer

⁷ For ease of reading, REACT has included subheadings in this section that are not part of the "Common Outline" of issues.

class has minimum specifications at which the class normally receives Standard Service. (See REACT Ex. 3.0C at 12:291-309; *see also id.* at 15:361-366, 16:393-17:427 (discussing implications of the minimums).) As described in ComEd's Tariff Sheets, the over-10 MW customer classes require, at minimum, nominal 4 kV, three-phase service. (See Ill. C.C. 10, Original Sheet 168, REACT Ex. 3.0C at 12:305-309.)

There are certain distribution system assets that are required to provide over-10 MW customer classes' minimum level of service, and it is ComEd's practice to use certain types or grades of distribution system assets to serve the classes. (See REACT Ex. 3.0C at 15:361-366, 16:393-17:427; REACT 6.0C at 5:112-115, 5:121-126, 7:169-175, 8:180-20:449.) Deviations from those minimums virtually always occur pursuant to Rider NS facilities or facilities provided by ComEd for ComEd's convenience. (See REACT Ex. 3.0C at 11:262-269, 16:402-17:409; REACT 6.0C at 25:601-26:616.) As an example, ComEd has admitted to a practice of having a single-user transformer ("ESS") on each class member's property, and not billing these class members for supplemental hookups to community transformers not covered by Rider NS that ComEd provides for ComEd's convenience. (See REACT Cross Ex. 23 (ComEd Response to Data Request REACT 6.11); Tr. 2150:21-2152:12.) Other examples of typical ComEd Standard Service for the Extra Large Load customer class include:

- 12 kV single-/two-phase line does not provide Standard Service (See REACT Ex. 3.0C at 16:393-396; REACT Ex. 6.0C at 11:257-260; *see also* Section VII.C.1.e. *infra* at pages 42-44);
- 4 kV line of any phase does not provide Standard Service (See REACT Ex. 3.0C 17:411-414; *see also* Sections VII.C.1.b(ii)(a) and e. *infra* at pages 26-31, 42-44);
- Connections to secondary transformers or lines (i.e. with voltages of below 4 kV) do not provide Standard Service (See REACT Ex. 3.0C at 17:421-427); and
- Service through an ESS with an input of 12 kV or above, three-phase or a customer-owned transformer are used to provide Standard Service (See REACT Ex. 6.0C at 18:403-413).

ComEd made no serious attempts to refute these facts; at best, it argues that the Extra Large Load customer class has forty-six 4 kV service points, but fails to state whether those service points are covered pursuant to Rider NS or are otherwise not considered “Standard Service.” (*See* Tr. 2165:5-2166:22; REACT Ex. 6.0C at 4:87-91, 6:134-139 (citing ComEd criticism).) IIEC witness Mr. Stowe corroborates Mr. Terhune’s testimony, demonstrating that a customer receiving service at a certain voltage is not necessarily an indication that the customer burdens the system at that voltage, due to onsite transformation paid for under Rider NS. (*See* IIEC Ex. 3.0 at 17:372-387.)

In sum, ComEd admits that in its daily operations as well as in its distribution load study, it employs the concept of “Standard Service” to identify assets used to serve particular customer classes, but it has not used this categorization to allocate costs in its cost of service study.

(ii) Required Service

Not all customers in the over-10 MW customer classes take Standard Service. (*See* REACT Ex. 3.0C, 22:543-544; Tr. 2148:16-20.) In fact, most members of the over-10 MW customer classes also take delivery at voltages other than nominal 4 kV and require use of distribution system assets that would be unsuitable for Standard Service to an over-10 MW customer. (*See, e.g.,* REACT Ex. 6.5; REACT Cross Ex. 25; REACT Ex. 3.0C, 21:520-22:558.) The term “required service” is used to refer to the sum of Standard Service and non-Standard Service assets that are used to provide service to customers. (*See* Tr. 2147:19-2148:6.)

The costs associated with many of the non-Standard Service distribution system assets are excluded from rate base because those costs are billed directly to individual customers under Rider NS. (*See* REACT Ex. 3.0C at 21:520-22:558; REACT Ex. 6.3 (containing ComEd’s Response to Data Request REACT 6.33); *see also* REACT Cross Ex. 25 (documents reflecting “Rider NS buildouts”).) Other non-Standard Service distribution system assets are used by

ComEd for its convenience because those distribution system assets' use is less costly to ComEd than installing or connecting to Standard Service distribution system assets. (*See* REACT 3.0C at 16:398-17:409; REACT Ex. 6.0C at 6:144-147.) Although ComEd nominally has identified the Rider NS-funded distribution system assets serving the Extra Large Load customer class, it has not specifically identified other non-Standard Service distribution system assets that ComEd uses to provide service to these customers. (*See* REACT Cross Ex. 25 (Rider NS distribution system assets); REACT Ex. 6.0C, 25:601-26:609.)

ComEd argued, and REACT has acknowledged, that it is possible that certain distribution system assets that are insufficient to provide Standard Service are not recovered under Rider NS. (*See, e.g.*, REACT Ex. 6.0C at 24:569-25:596.) Notably ComEd has not identified any such distribution system assets actually in service. (*See* Tr. 2209:9-2210:11.) Nor has ComEd estimated the impact of excluding those distribution system assets from the Extra Large Load customer class's base rate. Nonetheless, REACT acknowledges that those theoretical distribution system assets *should* be allocated based on the class's causation of those costs. (*See, e.g.*, REACT Ex. 6.0C at 25:586-589.) The potential existence of these distribution system assets, however, counsels strongly in favor of approving REACT's request that the Commission compel ComEd to investigate the distribution system assets serving the Extra Large Load customer class. As ComEd witness Mr. Alongi conceded, a properly designed study can potentially pick up these distribution system assets that would otherwise not have been fairly allocated. (*See* Tr. 2208:21-2209:8.)

Thus, by examining the required service for the over-10 MW customer classes, and subtracting the non-Standard Service assets that are paid for directly by those customers, it is

possible to accurately identify the distribution assets used to serve the over-10 MW customer classes.

(iii) The Disconnect Between ComEd's Rates And The Distribution System Assets Serving The Extra Large Load Customer Class Contravenes The Act

ComEd's proposed ECOSSE-based rates would overcharge the Extra Large Load customer class for some categories of distribution system assets that the class uses in no more than a *de minimis* amount. (See REACT Ex. 6.0C at 21:478-22:491.) ComEd acknowledged that it attempts to recover for all distribution system assets allocated to the Extra Large Load customer class that are in rate base -- whether suitable for Standard Service or not -- through Rate RDS. (See REACT Ex. 6.3 (ComEd Response to REACT Data Request 6.10).) In fact, the costs that ComEd recovers through Rate RDS are associated with several types of distribution system assets below the capacity required to provide Standard Service to the Extra Large Load customer class. (See REACT Ex. 6.3 (ComEd Responses to REACT Data Requests 6.01, 6.06-6.07, 6.10, and 6.12).)

Currently, ComEd allocates costs for those distribution system assets, including 12 kV single-/two-phase wires and 4 kV distribution system assets, based on coincident peak ("CP"), non-coincident peak ("NCP"), or similar allocators applied to Uniform System of Accounts ("USOA") accounts containing those distribution system assets lumped with other types of distribution service assets, rather than on class usage of distribution system assets. (See Tr. 2134:11-16, 2146:9-16, 2164:8-14 (arguing that Part 285 is only requirement for utility cost studies); Tr. 2184:19-2185:4; ComEd's Verified Response to REACT Verified Petition for Interlocutory Review of December 10, 2010 Ruling, at 6; *see also* REACT Ex. 6.3 (ComEd Responses to REACT Data Requests 6.20, 6.24, 6.25, 6.29, not identifying costs beyond USOA accounting).) In fact, ComEd argued:

More particularly, ComEd's ECOSS follows the regulation's directive by allocating the costs of distribution assets using the data recorded in specific accounts of the Uniform System of Accounts to the various customer classes on the applicable basis, such as coincident peak or non-coincident peak or number of customers. (See ComEd Exs. 15.0, 22.0 and 51.0.) **Thus, ComEd's ECOSS follows the Commission's regulations, results in a fair allocation for all delivery classes on an overall basis, and complies with the Public Utilities Act's "cost causation standard" referenced by REACT.** (Petition at 5, quoting 220 ILCS 5/16-108(c).)

(ComEd's Verified Response to REACT Verified Petition for Interlocutory Review of December 10, 2010 Ruling, at 6 (emphasis added).) Thus, ComEd maintains that applying an NCP or CP-related allocator to a USOA account that contains these distribution system assets, among many others, is the best estimate of each class's usage of those systems. (*See, e.g.*, Tr. 2144:10-16; REACT Ex. 6.3 (ComEd Response to Data Requests REACT 6.20, 6.23, and 6.24).) The hard evidence in this proceeding undermines the fundamental premise of ComEd's position.

The information contained in ComEd's response to ALJ-OTR 1 demonstrates that ComEd's allocation of entire categories of distribution system assets is far in excess of the Extra Large Load customer class's use of those non-Standard Service distribution system assets. (*See* REACT Cross Ex. 25 (ComEd's Response to ALJ-OTR 1); Sections VII.C.1.b(ii)(a) and e. *supra* at pages 26-31, 42-44 (describing results for 4 kV and single-/two-phase systems); *see also* REACT Verified Offer of Proof at 5-7.) This evidence confirmed what REACT witness Mr. Terhune had predicted in his pre-filed testimony. (*See* REACT Ex. 6.0C at 22:501-24:559.) The Commission now has evidence, based on class-specific information provided by ComEd pursuant to a REACT Data Request, that ComEd is charging non-cost based rates to the Extra Large Load customer class, because it is charging that class far in excess of the proportion of its use of the single-/two-phase and 4 kV systems. (*See* REACT Cross Ex. 25.) ComEd's proposed cost allocation and resulting rates fail to comport with the reality of ComEd's service to the Extra Large Load customer class, in violation of the Act.

**(iv) To Address This Disconnect, The Commission
Should Order A Study of Distribution System Assets
Used To Serve The Extra Large Load Customer Class**

The evidence in this proceeding proves that ComEd's proposed rates, if approved by the Commission, would result in the over 10-MW customer classes being overcharged for distribution system assets that those classes use, at most, at a *de minimis* level. In order for ComEd to charge the over-10 MW customer classes for the costs those classes cause -- no more and no less -- the Commission should direct ComEd to undertake a study to determine which non-Standard Service distribution system assets are used to serve those classes. Then, based on the results of the study of distribution system assets serving the largest customers (minus the distribution system assets taken out of rate base, for example, due to payment under Rider NS), ComEd can use simple allocators based on the capacity and/or use of the distribution system assets identified in the study to determine the actual cost causation of the over-10 MW customer classes. (*See* REACT Ex. 6.0C at 40:928-931.) Using that cost based allocation, ComEd can develop cost based rates for the over-10 MW customer classes, as required by the Act. (*See* 220 ILCS 16-108(c).)

Identifying which distribution system assets serve which class would greatly simplify the process of setting allocators that accurately reflect cost causation, allowing the Commission to allocate based on non-coincident peak or coincident peak as appropriate. (*See* REACT Ex. 6.0C at 40:928-931.) This survey would identify the way in which the over-10 MW customer classes actually use the various levels of ComEd's distribution system (through the customers' demand and the distribution system assets used), allowing allocation based on those distribution system assets to be vastly simplified. (*See id.*)

ComEd has the resources, personnel, and underlying concepts in place to undertake such a study. (*See* REACT Ex. 3.0C at 26:619-632, 27:649-657; REACT 6.0C at 39:894-905; *see*

also Section VII.C.1.b.(i)(a) *supra* at pages 24-26.) REACT witness Mr. Terhune testified that the sampling techniques, observation, assumptions, and overall process used by ComEd to perform its primary/secondary split analysis form a the solid basis for implementation of an improved methodology to support REACT's proposed study of the distribution system assets serving the over-10 MW customer classes. (*See* REACT Ex. 6.0C at 39:896-898; *see also* Section VII.C.1.b.(i)(a) *supra* at pages 24-26.) Furthermore, as ComEd admitted on cross-examination, it has access to a wealth of information from maps (both traditional maps and through ComEd's geographic information system tool, CEGIS) and the demand and service voltage/phase of customers' meters, allowing ComEd to identify the system(s) that supply electricity and in what volume to a service point, including the individual transformers involved. (*See* Tr. 2198:10-2206:1.)

ComEd claimed that conducting the proposed study would be too complex, too controversial, and one-sided. (*See, e.g.*, Tr. 2185:15-2187:4; ComEd Ex. 73.0 at 22:485-488.) None of those arguments has merit.

ComEd attempted to emphasize the "complexity" of conducting a study of distribution system assets serving the over-10 MW customer classes by alleging it has a large number of steps and requires generating new information. (*See, e.g.*, ComEd Ex. 73.0 2d Rev. at 22:491-24:518.) However, as ComEd witness Mr. Alongi admitted on cross examination, ComEd made a very similar complexity argument with regard to the primary/secondary split in the 2007 Rate Case, but the Commission did not credit ComEd's request. (*Compare* Tr. 2188:19-2189:8 *with* Tr. 2189:9-12; ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 206.) In spite of ComEd's protestations, the Commission found that ComEd's methodology for allocating secondary costs was flawed, and opened an investigation into how to reflect the appropriate costs

in rates. (*See* ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 206-207.) The Commission compelled ComEd to undertake the study because it would make ComEd's rates more reflective of cost causation. (*See* ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 38-40, 84-85.) As ComEd conceded, the Commission approved ComEd's use of sampling techniques to look at individual distribution system assets to determine estimates for the circumstances for entire classes. (Tr. 2195:4-8.) The Commission previously has ordered ComEd to undertake a study that enhances the match between cost causation and ComEd's rates, and it should do so again here.

ComEd next asserted that the proposed analysis of the actual costs of the facilities used to serve the over-10 MW customer classes would be "controversial," but conceded on cross-examination the enormous controversy that has resulted from its current flawed ECOSSE-based approach. (*See* Tr. 2187:5-14.) It is clear that ComEd's current approach has been hotly contested, and repeatedly rejected by the Commission. Furthermore, "controversy" has nothing to do with whether ComEd's rates are compliant with the cost based requirement from the Act. (*See* 220 ILCS 5/16-108(c).) The Commission should discount ComEd's view of what might be controversial, and embrace improvements to the way in which costs are allocated and rates are set for the over-10 MW customer classes.

ComEd also argued that a proposed study of the actual costs of the facilities used to serve the over-10 MW customer classes would be "one-sided cost avoidance analysis" and would ignore certain costs caused by those customer classes. (ComEd Ex. 73.0 2d Rev. at 21:470-472; *see also id.* at 21:454-456 (attempting to convert Staff witness Mr. Lazare's criticism of an IIEC proposal into a criticism of REACT's proposal). However, ComEd admitted on cross-examination that REACT's proposed study could just as easily add costs assigned to the over-10

MW customer classes as it could subtract them. (*See* Tr. 2208:7-2209:8.) REACT advocates that ComEd conduct a study of the actual distribution system assets serving the over-10 MW customer classes to ensure an accurate allocation, without pre-judging the results. Thus, ComEd's criticism does not apply to REACT's proposal.

The study advocated by REACT would greatly enhance the match of cost causation to the rates of the over-10 MW customer classes; ComEd has the ability to perform the study; the Commission has ordered similar studies in the past; and ComEd's counterarguments lack merit. Accordingly, REACT respectfully requests that the Commission order ComEd to undertake REACT's proposed study of the distribution system assets serving the over-10 MW customer classes.

d. NCP vs CP

The Commission should adopt an non-coincident peak ("NCP") allocator for ComEd's 12 kV and above primary substations and 12 kV and above, three-phase wire. REACT, IIEC, the Commercial Group, and ComEd all agree that for primary substations and 12 kV and above three-phase primary wire, NCP is an appropriate allocator. (REACT Ex. 6.0C at 10:238-11:244, 12:271-13:279; IIEC Ex. 3.0 at 20:451-24:549; ComEd Ex. 50.0 at 5:114-6:133; CG Ex. 1.0 at 4:94-95.)

ComEd has proposed using the NCP-SEC allocators to allocate costs for certain distribution system assets under its various rate designs. (*See, e.g.*, ComEd Ex. 23.0 at 7:145-149.) ComEd's NCP-SEC allocator is designed to track use of certain secondary distribution system assets, specifically distribution lines. (*See id.*) REACT witness Mr. Terhune explained that because the Extra Large Load customer class uses secondary distribution system assets in a negligible proportion, it would be inappropriate to allocate anything other than a reasonable estimate of the class's *de minimis* impact on the system. (*See* REACT Ex. 6.0C at 17:381-

18:391; *see also* CG Ex. 1.0 at 9:197-14:256 (arriving at the same conclusion for smaller-load customer classes).) Although ComEd’s final ECOSs (surrebuttal versions) do not allocate any costs to the Extra Large Load customer class as part of NCP-SEC, ComEd’s original preferred exemplar allocated the class a 0.79% allocation, a result that Mr. Terhune characterized as “absurd.” (*Compare* ComEd Ex. 75.1 at 76:83-84, ComEd Ex. 75.2 at 76:96-97 (allocating zero) *with* ComEd Ex. 22.1 at 76:89-90 (allocating 0.79%); REACT Ex. 6.0C at 18:385-391.) As a result, the Commission should follow the approach set forth in ComEd’s surrebuttal testimony, and use the NCP-SEC allocator for secondary lines.

e. Allocation of Primary Lines And Substations

The same logic that applies to the allocation of 4 kV distribution system assets discussed in Section VII.C.1.b(ii)(a) above at pages 26-31 (the section of the Common Outline entitled “4 kV Asset Allocation”) applies similarly to the allocation of Primary Lines and Substations to be addressed in this section. REACT incorporates by reference the arguments contained in Section VII.C.1.b(ii)(a) herein.

REACT further notes that REACT witness Mr. Terhune testified regarding allocation of primary lines and substations in his pre-filed testimony. (REACT Ex. 6.0C at 12:265-13:279 19:420-424, 27:618-627.) Based on that testimony as well as the hard evidence of the Extra Large Load customer class’s approximate actual usage demand for single-/two-phase and 4 kV electricity (based on transformer capacity and primary voltage connections in ComEd’s Response to ALJ-OTR 1), it is clear that ComEd has failed to allocate those assets in proportion to the way in which the class uses single-/two-phase or 4 kV distribution system assets. (*See* REACT Cross Ex. 25; REACT Verified Offer of Proof at 5-7; *see also* Section VII.C.1.b(ii)(a) *supra* at pages 26-31 (discussing 4 kV line and substation allocation).) ComEd’s response included information about the non-standard and standard service facilities used to serve 45 of

the 57 Extra Large Load class customers under “Rider NS” and those customers, and included information about the capacity of all of the listed distribution system assets. (REACT Cross Ex. 25; REACT Verified Offer of Proof at 5-7; Affidavit of Harry L. Terhune In Support of REACT Verified Offer of Proof at ¶¶ 16-17.) Only 0.2% of the capacity of the distribution system assets serving those 45 customers -- a good and reasonable proxy for actual demand -- is for single-or two-phase system, and, as noted in Section VII.C.1.b(ii)(a), under 0.7% of the capacity relies on the 4 kV system. (REACT Cross Ex. 25; REACT Ex. 6.5; REACT Verified Offer of Proof at 6 (citing Affidavit of Harry L. Terhune at ¶ 16.)

ComEd’s response to ALJ-OTR 1 again validates Mr. Terhune’s analysis in pre-filed testimony. Mr. Terhune testified that single-/two-phase and 4 kV distribution system assets are not used to serve the Extra Large Load class at Standard Service, and would generally be recovered using Rider NS for non-Standard Service. (See REACT Ex. 3.0C at 17:411-414, 17:421-427, 18:450, 19:455, 21:516-23:558, REACT Ex. 6.0C at 11:249-15:331, 19:420-424, 27:618-627.) ComEd’s response to Data Request ALJ-OTR 1 corroborates and confirms Mr. Terhune’s conclusion that a *de minimis* portion of the 4 kV system is used to serve the Extra Large Load class.

Both in the current case and historically, ComEd has lumped single-/two-phase and 4 kV distribution lines in the Primary Line Uniform System of Accounts (“USOA”) account, which includes distribution system assets that operate at higher voltages and that are used more extensively by the Extra Large Load customer class. Thus, unless and until ComEd separately breaks out the single-/two-phase and 4 kV distribution lines into a separate category, it is difficult to adjust the Primary Line and Primary Transformer allocators to reflect the actual use of the Extra Large Load customer class. Because there is insufficient evidence and testimony in

the record in the instant proceeding regarding the exact downward adjustments needed to the allocators for the USOA accounts containing 4 kV distribution system assets, the Commission should limit the over-10 MW customer classes to a system average increase. (*See, e.g.*, REACT Ex. 6.0C at 32:748-757.)

The assumptions upon which ComEd proposes to allocate costs to the over-10 MW customer classes have been shown to be wrong. Unless and until ComEd provides sufficient information to allow the parties to fully litigate the ramifications of the actual usage of facilities and services upon the proposed allocation of costs, ComEd should not be authorized to impose upon the customer classes rate increases greater than the system average increase established by the Commission. (*See* REACT Ex. 6.0C, 32:748-757.)

h. Allocation of Illinois Electricity Distribution Tax

The Commission should reject ComEd's request to change the way it bills the Illinois Electricity Distribution Tax ("IEDT") because the perfunctory rationale ComEd provides for its proposal ignores both the basis for the tax and the real world impact that this revision would have upon ComEd's largest customers.

The IEDT is a state tax placed on utilities. (*See* REACT Ex. 1.0C at 28:28:683-684; IIEC Ex. 2.0 at 10:255-258.) ComEd currently collects this tax in the Distribution Facilities Charge ("DFC"), which is assessed to most non-residential classes on a per kW basis. (*See* REACT Ex. 1.0C at 28:687-691.) Although ComEd does not appear to dispute that it fully recovers its IEDT liability currently, ComEd seeks to revise its assessment methodology, and bill every customer on a per kWh basis. (*See* IIEC Ex. 2.0 at 11:262-264; REACT Ex. 1.0C at 28:679-680, 29:695-696; ComEd Ex. 16.0 3d Rev. at 19:403-406 (admitting change makes no impact on ComEd bottom line).) The Commission should adopt REACT and IIEC's proposal that ComEd maintain the *status quo* on its billing practice.

There are several reasons to reject ComEd's proposal change to its method of charging its IEDT costs. First, the change would add an unnecessary layer of complexity for over-10 MW customers. (*See* REACT Ex. 1.0C at 29:698-702.) Furthermore, changing to a per kWh charge for IEDT contradicts ComEd's stated goal of moving to a "Straight Fixed Variable" rate design. (*See id.* at 29:706-714.) Finally, the origin of the IEDT was a "plant in service" tax to replace the revenue the state made from taxing ComEd's generation assets before deregulation. (*See* IIEC Ex. 2.0 at 19:448-467; REACT Ex. 4.0 at 18:372-373) That is, since the cost causation for this tax is mostly plant in service, not energy delivered, it is more appropriately recovered on a kW basis, rather than via a per kWh charge. (*See id.* at 20:470-23:539 (including references to examples of why costs are not caused by kWh delivered); *see also* IIEC Ex. 2.2, 2.3 (same).)

Arguments for revising the way in which the IEDT is collected are unpersuasive. For example, Staff and ComEd argued that IEDT recovery as a per kWh charge does not run counter to Straight Fixed Variable because IEDT is a volumetric charge -- a misconception that Mr. Stephens definitively rebutted in his testimony cited above. (*Compare* ComEd Ex. 49.0R at 17:398-18:402; Staff Ex. 26.0 at 18:421-19:425 *with* IIEC Ex. 2.0 at 20:470-23:539; IIEC Ex. 2.2, 2.3.) With regard to the criticism about the increased complexity, Staff simply disagrees without further discussion, while ComEd is silent on the issue. (*See* Staff Ex. 26.0 at 19:427-430.) Neither ComEd nor Staff rebuts the finding that costs related to IEDT are not caused by delivered volume alone, making it inappropriate to recover the costs via a per kWh volumetric charge. (*See* Staff Ex. 26.0 at 20:455-21:484; ComEd Ex. 49.0R at 17:382-390.) In fact, ComEd does not even address the extensive review of the history of the IEDT, beyond agreeing with Staff's position in ComEd's surrebuttal. (*See* ComEd Ex. 72.0 2d Rev. at 18:391-393.) ComEd has failed to meet its statutory burden to demonstrate that a change is prudent and reasonable --

or that it is cost-based -- as a result, REACT respectfully requests that the Commission reject ComEd's proposal.

j. Customer Care Cost Allocation

ComEd and REACT agree that Customer Care Costs “represent those costs ComEd incurs to provide customer service for its delivery and supply customers,” and include activities such as calculating/generating/mailling bills, maintaining customer information, payment and collection, and customer relations. (*See, e.g.*, REACT Ex. 2.0 at 5:97-105; ComEd Ex. 19.0R at 5:111-6:121; *see also* Tr. 1314:13-1315:12.)⁸ Furthermore, the parties agree that some of the Customer Care Costs are incurred to support the delivery function, some are incurred to support the supply function, and that the costs should be allocated based on cost causation principles. (*See* REACT Ex. 5.0 at 13:258-264 (highlighting importance of cost causation); Tr. 1315:13-15, 1316:12-21 (ComEd); Tr. 1182:20-1183:8, 1183:20-1184:1 (Staff witness Mr. Rukosuev).) ComEd agrees with REACT that Customer Care Costs should, consistent with cost causation principles, be set in a way that encourages development of retail electric competition. (*See* Tr. 1317:4-13; REACT Ex. 5.0 at 12:231-234; REACT Ex. 2.7 at 9:174-178; REACT Ex. 2.8 at 5:98-100; REACT Ex. 2.9 at 5:85-86, 9:176-178; REACT Ex. 2.10 at 19:377-379.) Finally, the parties agree that ComEd has filed two studies, its “Allocation Study,” which is based on allocating costs in a manner consistent with embedded cost principles, and its “Switching Study,” which is based on an avoided cost methodology. (*See* REACT Ex. 2.0 at 9:182-186, 16:329-332, ComEd Ex. 19.0R at 7:164-8:181; Staff Ex. 12.0 at 26:609-620.)

⁸ Furthermore, no party disputes that ComEd is entitled to full recovery of its prudent and reasonable costs; in other words, the question presented regarding ComEd's Customer Care Costs is strictly one of allocation.

In addition to the cost-based rates requirement in Section 16-108(c), the Act sets out some other basic guidelines applicable to the allocation of costs -- including Customer Care Costs -- between supply and delivery. Section 16-102 states that:

"Delivery services" means those services provided by the electric utility that are necessary in order for the **transmission and distribution systems** to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

(220 ILCS 5/16-102 (emphasis added).) Thus, delivery services include the transmission and distribution systems, not the supply system. The Act further states that:

The Illinois Commerce Commission should **act to promote the development of an effectively competitive electricity market** that operates efficiently and is equitable to all consumers.

(220 ILCS 5/16-101(d) (emphasis added).) The evidence shows that the Allocation Study, with the modifications proposed by Mr. Merola to both the costs included and the allocators used, best satisfies these statutory criteria. As a result, the Commission should adopt REACT's recommendations for allocating Customer Care Costs.

The Commission has previously questioned the "Switching Study" allocation methodology that ComEd has used -- and that it proposes to use in this proceeding. In the 2007 ComEd Rate Case, the Commission disagreed with ComEd's allocation that was based upon a Switching Study, stating:

The Commission believes that some percentage of customer care costs may well be attributable specifically to bundled supply customers. This allocation could substantially reduce costs assigned to distribution customers while increasing bundled supply rates.

(ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 207-208 (emphasis added).)

As a result of its findings in the 2007 ComEd Rate Case, the Commission examined the same issue in the Special Investigation Proceeding, in which it found:

If the Commission's goal is to assign costs to the cost causers, it is difficult to imagine that less than 1% of ComEd's customer care costs are caused by supply related matters. ComEd does not explain why an avoided cost study is used for these costs and for every other cost an embedded cost study is done.

(ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67 (emphasis added).) The Commission noted the disparity in costs included between REACT and ComEd's competing studies:

The record before us does not provide the answers and because of the investigatory nature of this docket, it is appropriate that these issues be addressed in a subsequent rate proceeding. First, the parties cannot agree on what costs we are allocating. Is it merely the O&M costs as proposed by ComEd or the much larger amount proposed by REACT that includes all the customer care costs in ComEd's ECOSS?

(*Id.* at 68.) The Commission concluded in the Special Investigation that:

For REACT, after Mr. Merola assigned costs that he believes are clearly delivery to the delivery customer, he took the remaining costs and divided them 50-50 between delivery and supply. Although this is an arbitrary allocation, **REACT's methodology is consistent with an embedded cost methodology.** Because the record does not contain information to calculate the appropriate allocator, this is an issue appropriate for a subsequent rate proceeding. **To facilitate the further analysis of these issues, ComEd is directed to perform an embedded cost study for these costs and present it for consideration and discussion in its next rate proceeding.**

(*Id.* (emphasis added).) The Commission clearly required ComEd to present a study with an embedded methodology to contrast with the "difficult to imagine" results of the switching study previously presented by ComEd.

In order to accurately allocate the Customer Care Costs, the Commission should analyze three separate issues:

First, the Commission should determine which Customer Care Costs should be allocated. REACT and Staff agree that it should be all Customer Care Costs, while ComEd sticks to the same position criticized by the Commission in the Special Investigation Proceeding, only examining direct O&M costs (excluding indirect O&M as well as capital costs).

Second, the Commission should chose as its basic allocation approach the “Allocation Study” (an approach based on embedded cost of service principles) instead of the “Switching Study” (an approach based on an avoided cost of service methodology). The Commission previously has been skeptical of avoided cost studies and has expressed its desire to see an embedded cost study fully supported by the evidentiary record.

Finally, assuming that the Commission adopts the Allocation Study as its basic approach, the Commission should apply allocators explained by REACT witness Mr. Merola that accurately and fairly reflect cost causation. Assuming that the Commission agrees with REACT and Staff that all Customer Care Costs should be allocated, the allocators should be appropriate for **all such costs, including** capital costs indirect O&M costs as well as direct O&M costs.

REACT respectfully requests that the Commission enter an Order directing ComEd to allocate all of its Customer Care Costs, using an Allocation Study approach, apply the adjusted allocators set forth by REACT witness Merola.

(i) Allocation Study vs. Switching Study

The Allocation Study approach to allocation of Customer Care Costs is preferable and fully justified by the record evidence. In contrast, the Switching Study approach has been historically questioned by the Commission, is theoretically unpersuasive, and relies on speculative customer switching scenarios that have no basis in reality.

The Commission previously has examined this issue, and strongly criticizing ComEd’s Switching Study approach. (See REACT Ex. 2.0 at 6:116-8:158 (summarizing Commission criticisms from ICC Docket Nos. 07-0566 and 08-0532 of avoided cost approach).) Discussing the Allocation versus Switching Study approaches in the Special Investigation Proceeding, the Commission found that REACT “raise[d] many valid points and when the two methodologies

are compared, questions arise.” (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.) The Commission further stated:

REACT, however, points to functions that clearly support supply, yet no costs are allocated to supply for these functions in ComEd’s [analysis] REACT informs us that it was unable to get this information from ComEd. Similarly, REACT raises a valid argument that some portions of the calls received by the Customer Call Center should be allocated to supply.

(*Id.*(emphasis added.) After concluding that “REACT’s methodology is consistent with an embedded cost methodology”, the Commission “directed [ComEd] to perform an embedded cost study for [Customer Care] costs and present it for consideration and discussion in [ComEd’s] next rate proceeding.” (*Id.*) Nevertheless, ComEd continues to advocate for using essentially the same avoided-cost Switching Study as ComEd proposed in those prior proceedings. (REACT Ex. 2.0 at 8:162-171.)

Assuming proper functionalization, a modified Allocation Study meets the Act’s requirements. As ComEd witness Mr. Hemphill testified and ComEd witness Mr. Donovan agreed, rates that accurately reflect cost causation result in accurate price signals and lead to more efficient markets, including a more efficient (i.e., competitive) retail electricity market in Illinois. (*See* REACT Ex. 2.0 at 6:112-114, 123-124.) Although Mr. Merola criticized ComEd’s Allocation Study for failing to consider all appropriate costs and misallocating certain costs, the fundamental principle of functionalizing shared costs based on an allocator that reflects the reality of ComEd’s operations (or reasonable assumptions intended to reflect that reality) is necessary for establishing cost-based rates. (*See* ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67-68; REACT Ex. 5.0 at 13:258-264, 16:320-325; Tr. 2010:9-2012:14 (Mr. Merola discussing reasonable assumptions); REACT Ex. 2.0 at 20:421-31:662 (criticisms of Allocation Study).)

In sharp contract to the Allocation Study approach, the Switching Study is inconsistent with the Act and the Commission's guidance in the Special Investigation Proceeding. ComEd's Switching Study examines costs that today are demonstrably caused by the supply function and then tries to predict what those costs might be one day in the future based upon potential 10% and 100% customer switching levels. The Switching Study purports to allocate current costs based on ComEd's guess about what costs will be avoided in the future based on unknown customer switching scenarios, rather than whether the costs are caused by supply or delivery functions today. (*See* REACT Ex. 2.0 at 15:324-16:339, 17:356-364; REACT Ex. 5.0 at 11:204-215; *see also* ComEd Ex. 19.0R at 7:164-8:171.) As a result, ComEd's Switching Study is highly speculative and depends on customer switching scenarios that neither exist today nor are likely to exist by any reasonably predictable future date.

As ComEd witness Mr. Donovan conceded, "The Switching Study's methodology examines whether the customer services costs are sensitive to customers switching from ComEd supply to RES supply to determine what costs, if any, are directly related to ComEd's delivery service." (ComEd Ex. 19.0R at 8:165-167.) This definition of "delivery service" is inconsistent with the definition in the Act, which does not allow utilities to collect "unavoidable" supply-related charges as part of their delivery service charges. (220 ILCS 5/16-102.) Whether ComEd's costs change or stay the same in the event of additional switching has nothing to do with whether the costs were *caused* by the delivery function, i.e. whether those costs fit within the definition of "delivery services" in Section 16-102 of the Act. (*See* REACT Ex. 5.0 at 13:252-264, 15:288-16:325.) Furthermore, although it arguably may reflect cost causation at some point in the future, the avoided cost approach does not reflect whether ComEd incurred certain costs *in the present* due to supply or delivery. (*See* REACT Ex. 5.0 at 186-196.)

As a corollary, because the Switching Study allocates less than 1% of the Customer Care Cost to supply, it arrives at a nonsensical, anti-competitive result. (*See* REACT Ex. 2.0 at 8:162-171; *see also* ComEd Ex. 19.1 (providing results of Switching Study).) As the Commission itself found, “it is difficult to imagine that less than 1% of ComEd’s customer care costs are caused by supply related matters.” (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67.) This is particularly true given the extremely complex supply rates that ComEd offers. (*See* REACT Cross Ex. 20 (Rate BES-H).) ComEd’s own Allocation Study shows how implausible this result is: **ComEd’s own Allocation Study allocates over 13 times more costs to the supply function than ComEd’s Switching Study.** (*Compare* ComEd Ex. 19.1 *with* ComEd Ex. 19.2.) As Mr. Merola points out, an over-allocation to the delivery function -- besides being violation, by its own terms, of the cost-causation requirements in Section 16-108(c) of the Act -- also harms the competitive retail electric market, in contravention of the mandate of Section 16-101(d) of the Act. (*See* REACT Ex. 5.0 at 12:231-234; REACT Ex. 2.7 at 9:174-178; REACT Ex. 2.8 at 5:98-100; REACT Ex. 2.9 at 5:85-86, 9:176-178; REACT Ex. 2.10 at 19:377-379.)

The Switching Study is highly speculative. ComEd admitted the speculative nature of its Switching Study both on cross examination and in testimony. (*See* Tr. 1334:2-1337:10 (discussion of speculative nature of 10% and 100% switching levels; ComEd Ex. 72.0 at 2:31-33; *see also* Tr. 1190:8-1191:12 (Staff Witness Mr. Rukosuev agreeing that future scenarios are speculative).) Both ComEd and Staff ignore that, in order to construct the Switching Study avoided cost numbers, ComEd had to come up with a total cost reflecting current circumstances, then heavily rely upon the estimated costs at 10% and 100% switching for comparison -- scenarios that Mr. Donovan and Mr. Rukosuev admitted were speculative and that Mr. Donovan admitted was not expected to take place until sometime after 2014, possibly long afterward. (*See*

id.; Tr. 1335:16-1336:11; ComEd Response to PR 11.02; Tr. 1337:5-10 (Mr. Donovan admitting that nobody knows what Customer Care Costs will look like in 2015); REACT Ex. 5.0 at 10:186-202.)

As Mr. Donovan conceded in his pre-filed rebuttal testimony, referring to the 10% and 100% switching estimated costs:

ComEd agrees that these impacts are only **potential** as opposed to actual. They are not based on current costs, and the actual future O&M implementation costs are likely to be different from the figures that ComEd utilized in the Switching Study.

(ComEd Ex. 48.0 at 5:104-107 (emphasis in original).) Staff witness Mr. Rukosuev also conceded on cross-examination that the cost levels at 10% and 100% switching were “speculative future scenario[s].” (Tr. 1190:8-17.) Mr. Rukosuev then stated that “those two scenarios are partly irrelevant.” (Tr. 1191:7-12; *see* ComEd Ex. 72.0 at 2:31-33.) This was an unusual and rather startling statement: the whole basis of ComEd’s Switching Study approach is to examine and compare projected switching scenarios and predicted cost implications of those scenarios. To say, then, that portions of the study dealing with the 10% and 100% switching scenarios are irrelevant is to concede that the two data points that purport to “contextualize” the 1% scenario by estimating what costs are “avoided” as simply incorrect. But if those portions of the study are to be ignored, then there is no basis to compare cost implications of different switching levels, which is the entire theory behind the study. Mr. Rukosuev’s candid admission about the speculative nature of the Switching Study and the need to ignore two thirds of it reveals the Switching Study approach as highly unpersuasive and subject to more questions than answers.

Despite ComEd’s failure to comply with the Act and Commission guidance, Staff attempts to prop up the Switching Study by suggesting that using an embedded (i.e., allocation)

approach would set a harmful precedent for other Illinois utilities. (*See* Staff Ex. 10.0 at 31:709-718.) However, Staff did not present any evidence regarding whether other utilities accurately allocate these costs already, much less any analysis regarding the impact a change in allocation methodology, if any, would have on other utilities' rates. More to the point, as Mr. Merola pointed out, the Commission should allocate costs based on causation -- as required by the Act -- on a case-by-case basis. (*See* REACT Ex. 5.0 at 14:266-286.) And, of course, the embedded approach that Mr. Rukosuev is concerned about forms the basis for **every other** cost allocation decisions that ComEd has made in this case.

REACT respectfully requests that the Commission direct ComEd to assign Customer Care Costs using the embedded cost, Allocation Study methodology.

(ii) **Direct O&M Costs vs. Total Costs**

ComEd and REACT disagree about what costs should be included in the category of Customer Care Costs that should be allocated between the delivery function and the supply function. In other words, there is a question about the size of the "pie" that needs to be split between the delivery function and the supply function. REACT has consistently maintained that *all* Customer Care Costs should be included. ComEd asserted that a much smaller portion of Customer Care Costs should be included. Staff agreed with REACT's approach.

In its Final Order in the Special Investigation Proceeding, the Commission specifically set the question of which costs should be included in the allocation between supply and delivery, holding that "it is appropriate that these issues be addressed in a subsequent rate proceeding." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.) Both REACT and Staff agree that, in order to be consistent with the Special Investigation Order, ComEd should consider "total costs," including direct operations and maintenance ("O&M"), indirect O&M, and capital

costs. (*See* REACT Ex. 2.0 at 20:421-25:516; REACT Ex. 5.0 at 6:110-9:174; Staff Ex. 28.0 at 5:102-8:190.)

ComEd conceded that indirect O&M costs and capital costs had been removed from the “pie” of Customer Care Costs that ComEd is analyzing. (*See* ComEd Ex. 50.0 at 11:249-50.) This led ComEd to fail to consider a host of indirect O&M costs including: executive and employee compensation, office supplies and expenses not billed to a department, fees and expenses of professional consultants and others for general services, employee pensions, insurance, property maintenance, regulatory commission expense, general labor and expenses, and property rent. (Tr. 1324:18-1326:14; 2282:4-21; *see also* REACT Ex. 2.0 at 21:438-445 (citing to admissions in ComEd Responses to REACT Data Requests).) Furthermore, ComEd admitted that it did not consider capital costs, meaning that it excluded depreciation expenses, tax expenses, and costs associated with the rate of return on the relevant assets. (Tr. 1326:15-1327:17, 2282:22-2283:21; *see also* REACT Ex. 2.0 at 22:454-24:506 (listing excluded capital-related costs and criticizing ComEd for their exclusion).)

REACT witness Mr. Merola presented an analysis of Customer Care Costs that showed that the total size of the “pie” to be allocated is approximately \$434 million. (*See* REACT Exs. 2.4C and 2.5C; *see also* REACT Ex. 5.0, at 8:152-9:174.) In sharp contrast, the result of ComEd’s admitted omissions of indirect O&M and capital costs is that ComEd artificially reduced the “pie” of Customer Care Costs by approximately \$259 million (or approximately 60% of the actual total), for a proposed total of just approximately \$176 million. (*See* REACT Ex. 2.0 at 9:192-10:199.) That reduction was completely unjustified. (*See* REACT Ex. 2.0, at 20:419-25:516; REACT Ex. 5.0, at 6:110-9:174.)

The plain language of the Order required consideration of “these costs,” referring to the total costs allocated by Mr. Merola in that docket. (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68; *see* REACT Ex. 5.0 at 6:112-7:126; *see also* Staff Ex. 28.0 at 7:157-164 (arriving at same result).) ComEd’s witness in charge of ComEd’s Customer Care Cost analysis could not explain why ComEd’s studies excluded such a large portion of Customer Care Costs, other than to say that he received that instruction from a superior at ComEd. (Tr. 1323:3-11; *see also* Tr. 1314:21-1315:4 (conceding that indirect O&M and capital costs are part of customer care costs).) This falls well short of a persuasive explanation for excluding costs that the Commission previously indicated **should** be included in the analysis.

There simply is no justification to limit the scope of the Customer Care Costs to be allocated to solely the direct O&M costs. REACT respectfully requests that the Commission direct ComEd to allocate all of its Customer Care Costs.

(iii) Adjustment of Allocation Study Allocators

Although the Allocation Study approach is conceptually sound and clearly superior to the Switching Study approach, the Allocation Study that ComEd presented requires adjustments in order to accurately reflect cost causation. Allocators that reflect ComEd’s operational reality -- or reasonable assumptions about it -- will much more closely tie the study’s allocations with actual cost causation, as required by the Act, and will therefore better conform to the Act’s requirement for pro-competitive, cost-based delivery services rates. (*See* 220 ILCS 5/16-108(c), 101(d), 102.)

The Commission previously recognized a need for a more robust evidentiary record to address “information to calculate the appropriate allocator,” and requested that the parties develop the record more fully in the context of a Rate Case. (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.) As Mr. Merola testified, some of ComEd’s proposed

allocators do not even attempt to reflect cost causation. (REACT Ex. 2.0 at 25:531-30:635; REACT Ex. 5.0 at 19:397-27:557.) Accordingly, Mr. Merola adjusted some of these allocators based on the information ComEd provided, and -- due to a lack of complete information from ComEd -- provided estimates that, in Mr. Merola's expert opinion, accurately approximate ComEd's operational reality. (*See id.*) Mr. Merola fully supported his opinions with rational and reasonable analysis based on available information and his years of experience. (*See* REACT Ex. 2.0 at 8:160-10:211, 11:223-227, 12:242-15:321, 17:366-19:418, 23:488-31:662, REACT 5.0 at 16:330-27:557.). Thus, the evidentiary record in the instant proceeding satisfies the Commission's request for support for "information to calculate the appropriate allocator." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.)

Mr. Merola's concluded that 20.7% of Customer Care Costs are supply-related. This percentage is not a radical or unreasonable number, and it rebuts any suggestion that Mr. Merola's analysis might involve inflation of numbers to reach an unreasonably high result. On the contrary, this percentage strongly suggests that Mr. Merola's analysis is cautious and fairly performed and is not results-driven. The Commission has signaled that allocators properly supported by the evidentiary record would reflect cost causation. (*See* ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.) That is precisely the analysis that REACT has provided through Mr. Merola's testimony.

ComEd's inappropriate allocators do not withstand scrutiny. As a threshold matter, in the Special Investigation Order, the Commission specifically identified ComEd's allocation for the Large Customer Service Department -- including ComEd's failure to determine whether calls to the department supported supply or delivery -- as producing an absurd result and lacking evidentiary support. (*See* ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.)

ComEd admitted in this proceeding that it still does not have information about call center calls, and inexplicably allocated just half of an employee (out of 79) to work that ComEd performs related to supply-related issues. (*See* Tr. 1311:9-1312:18 (citing ComEd response to PR 11.03); REACT Cross Ex. 16 (PR 11.03), REACT Ex. 2.0 at 26:543-544.) ComEd similarly failed to provide concrete information reflecting cost causation for its Billing Calculation Allocator, System Billing Allocator, CIMS costs, and other allocators. (REACT Ex. 5.0 at 19:397-27:557.) Because its proposed allocators do not reflect costs, they should be rejected in favor of Mr. Merola's, which are supported on a cost causation basis.

Mr. Merola's proposed adjustments fall into two categories. First, Mr. Merola changed which allocator applied to certain situations, ameliorating nonsensical situations such as how ComEd allocated a different percentage of costs to supply for mailing bills and opening mail. (*See* REACT Ex. 5.0 at 22:458-23:474.) Second, Mr. Merola took situations where ComEd's allocation methodology on its face had little to do with cost causation, and installed more reasonable assumptions about cost causation. (*See, e.g.*, REACT Ex. 2.0 at 26:546-553, 26:560-29:622.) These two categories of adjustments combine to make the Allocation Study significantly more reflective of cost causation.

Moreover, Mr. Merola's proposed allocators are the **only** allocators that are based upon examining all of the Customer Care Costs. ComEd's allocators are limited to assigning direct O&M costs. Thus, assuming that the Commission agrees with REACT and Staff that all Customer Care Costs should be allocated, rather than just the direct O&M costs, the only allocators that are supported by the record are those presented by REACT. (*See, e.g.*, REACT Ex. 5.0, 25:521-31:662; *see also* ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68 (noting need for evidencing record support for allocators.)

REACT respectfully request that the Commission direct ComEd to allocate all of its Customer Care Costs using the Allocation Study, with the adjustments proposed by Mr. Merola.

k. Other Docket 08-0532 Compliance Issues

Although the Commission provided clear and direct instructions to ComEd in the Special Investigation Proceeding Final Order, ComEd did not comply with the substance of that Order. Specifically: (1) ComEd continued to propose rates based upon essentially the same flawed ECOSS that the Commission opened the Special Investigation Proceeding to fix; and (2) ComEd failed to complete all of the tasks required by the Final Order. The Commission should send a strong message that anything less than full compliance with clear Orders is not acceptable, and find that ComEd failed to comply with the Final Order in the Special Investigation Proceeding.

The Commission ordered that “in its next rate filing, ComEd should provide an updated ECOSS consistent with this Order for consideration in that proceeding.” (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 84.) Among the other mandates, the Commission directed ComEd to:

[D]evelop and provide in its next rate proceeding: 1) direct observation or sampling and estimation techniques of ComEd’s system to develop more accurate and transparent differentiation of primary and secondary costs; 2) other utilities’ methods of differentiating primary and secondary systems and costs; 3) function based definitions of service voltages for facilities other than the line transformers already addressed; 4) **an analysis of which customer groups are served by which system service components**; and 5) consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service.

(*Id.* at 40 (emphasis added.)) The Commission could not have been clearer in directing ComEd to improve its ECOSS to better reflect cost causation. Undaunted, ComEd’s proposed ECOSS in the present case bears little resemblance to the ECOSS contemplated by the Special Investigation Order; instead, it closely resembles the ECOSS the Commission strongly criticized in the 2007 ComEd Rate Case. (*See* ComEd Ex. 15.0R at 6:117-118, 8:154-9:157.)

REACT witness Mr. Fults testified that ComEd proposed essentially the same deeply-flawed ECOSS that the Commission rejected in the 2007 Rate Case. (*See* REACT Ex. 1.0C at 12:264-20:521, REACT Ex. 4.0 at 6:131-135.) Staff agreed that ComEd’s filing did not comport with the substance of the Commission’s Order. Indeed, Staff initially came to the conclusion that ComEd’s preferred exemplar was its actual proposed ECOSS, because the ECOSS ComEd filed was so divorced from the Special Investigation Proceeding Final Order directives. (Staff Ex. 10.0 at 4:76-11:241; Staff Ex. 26.0 at 2:52-5:101.) Staff went as far as to state that ComEd’s position on its proposed ECOSS “reveals the fundamental problems in the Company’s position on rate design.” (Staff Ex. 26.0 at 4:95.)

Setting aside the ECOSS, Staff further points out that ComEd also failed to meet the “develop and provide” directives contained in the Special Investigation Order. Staff witness Mr. Lazare’s thorough and exhaustive analysis persuasively details the ways in which ComEd was deficient -- failing to directly observe circuits in the field, failing to create reasonable sampling techniques in lieu of direct observation, and failure to examine how other utilities treat the primary/secondary split -- and why those deficiencies are problematic. (*See* Staff Ex. 10.0 at 18:411-30:707; Staff Ex. 26.0 at 5:112-11:255.) Although ComEd argues that Staff did not prove a negative and establish that ComEd missed anything by failing to comply with the Commission’s directives, ComEd does not contest that it did not satisfy the directives themselves. (*See, e.g.*, ComEd Ex. 49.0 at 36:801-805.) Even so, ComEd concedes that Staff correctly pointed out several cases in which, for instance, direct field observation would provide information that review of its maps would not. (*See* ComEd Ex. 73.0 2d Rev. at 31:682-685.) While REACT witness Mr. Terhune noted that the primary/secondary study is proof that ComEd can directly observe and develop reasonable sampling techniques, Staff’s criticism remains valid,

and should inform the Commission's direction to ComEd in crafting suggested study to identify distribution system assets serving the over-10 MW customer classes. (*See, e.g.*, REACT Ex. 6.0C at 39:896-905.)

As a result of ComEd's non-compliance with the Special Investigation Proceeding Final Order, the Commission should reject ComEd's ECOSS to the extent that it simply rehashes the same methodologies for the over-10 MW customer classes that the Commission strongly criticized in the 2007 ComEd Rate Case and Special Investigation Proceeding. Given the absence of a reliable and compliant ECOSS for those customer classes, any approved increase in their rates should be no more than a system average increase in this docket. The Commission also should include unambiguous requirements that ComEd adopt REACT's proposed modifications to ComEd's ECOSS, and develop allocation factors that reflect the class's actual usage of distribution facilities. (*See* REACT Ex. 6.0C at 32:748-757; *see also* VII.C.1.b(ii)(a) and e., at pages 26-31, 42-44 *supra*.) REACT also supports compelling ComEd to ameliorate the shortfalls addressed by Mr. Lazare in ComEd's next rate case filing.

Finally -- and separately from the other points above -- as REACT argued in its Verified Motion to Dismiss Without Prejudice, ComEd's failure to meet the deadlines set out in Special Investigation Order for its full primary/secondary study was grounds for dismissal of this case. The Commission should have dismissed the current proceeding without prejudice, as explained in REACT's Verified Motion to Dismiss Without Prejudice, Petition for Interlocutory Review and Application for Rehearing. REACT incorporates its prior pleadings on this issue by reference.

I. Other Issues

Starting with the 2007 Rate Case, REACT repeatedly has asked a simple question: **“What did the over-10 MW customers do to deserve such a disproportionate, massive rate**

increase?” (*See, e.g.* REACT Ex. 1.7, 4:64-65; REACT Ex. 1.8, 3:54-4:62 (emphasis added).)

ComEd still has provided no answer, but nonetheless continues to assert that it is entitled to a rate increase of **more than a million dollars per year, per customer** from its largest customers.

In the meantime, the Commission specifically has identified several deficiencies in the ECOSS that led ComEd to propose those massive increases; deficiencies that the continue to be at the heart of ComEd’s proposed ECOSS. (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 38-40, 84-85.) ComEd’s president maintained that the rates set by the Commission at the conclusion of the 2005 Rate Case did not contain subsidies. (*See* REACT Cross Ex. 11.) The customers in the over-10 MW customer classes have not individually or collectively materially changed operations or service requirements in any manner since then that would justify a disproportionate rate increase. (REACT Ex. 4.0 at 11:208-217; *see also* REACT Ex. 1.7-1.8.) With regard to REACT’s request for a system average increase for the over-10 MW customer classes, the Commission should keep in mind the history of the Commission refusing to endorse ComEd’s ECOSS-based rates for these customers, and the lack of cost causation in its ECOSS, as evidenced by prior Commission Orders as well as the new evidence that REACT and other parties have developed in the instant proceeding.

D. Rate Moderation⁹

It would be inappropriate to refer to ComEd’s proposed rate increases for the over-10 MW customer classes as “rate moderation,” since that term implies that the appropriate rate is known. In this case, ComEd has failed to provide the information necessary to determine what appropriate cost based rates should be for the over-10 MW customer classes. As a result, the

⁹ Some of the discussion regarding the high dollar impact was in the “Other Issues” Section of REACT’s Pre-Hearing Memorandum.

Commission should limit any increases to those customer classes to no more than the system average.

As part of the 2007 Rate Case, the Commission stated:

Above, we determined that the proper assignment of primary and secondary distribution costs would likely reduce the total cost allocation to customers in the Extra Large Load, High Voltage, and Railroad delivery classes. It would be inconsistent with that finding to accept ComEd's two-step rate increase. Instead, an allocation that more closely reflects a proper cost of service would be reflected in a four-step, gradual movement toward rates based on the ECOSS for Extra Large Load, High Voltage, and Railroad Delivery Classes. [citation removed.] Thus, the Commission authorizes a 25% movement toward ECOSS based rates for these customers, instead of a 50% movement.

(ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 213 (emphasis added).)

Clearly, the Commission anticipated that when it ordered ComEd to “proper[ly] assign[] primary and secondary distribution costs” that ComEd would improve and update its ECOSS to reflect those changes. (*Id.*) However, ComEd's proposal in the instant proceeding simply reruns the same fundamentally broken ECOSS, and treats the rate moderation plan as an automatic increase to which it is entitled. (*See, e.g.,* ComEd Ex. 16.0 3d Rev. at 12:247-261; REACT Ex. 1.0C at 12:264-20:521, REACT Ex. 4.0 at 6:131-135 (ComEd is proposing the same flawed ECOSS); Sections VII.C.1.b(ii)(a) and e. *supra* at pages 26-31, 42-44 (establishing that allocations do not reflect cost causation).)

Additional movement toward “ECOSS-based rates” in light of ComEd's proposals misappropriates the term “mitigation.” As was explained with regard to the “mitigation plan” proposed by ComEd in the 2007 Rate Case:

Prior to thinking about “mitigating” ComEd's proposed increase, the Commission must determine if there is a legitimate basis for that original proposal. . . . what ComEd has proposed is simply to delay the proposed increase, requiring as a condition of its proposal that the Commission take the highly unusual step of pre-determining the size of the increase it would assign to ComEd's over-10 MW customers in ComEd's next rate case.

(REACT Ex. 1.8 at 4:66-71.) As REACT witness Mr. Fults testified in the present case, a “moderation” plan, no matter how gradual, does not make non-cost based rates designed from a flawed ECOSS any more cost based or compliant with the Act. (REACT Ex. 1.0C at 20:514-22:554, REACT Ex. 4.0 at 11:219-12:250.) The Commission should not follow the mitigation plan when -- as is the case here -- a party has shown that the underlying ECOSS is does not reflect cost causation. (See Sections VII.C.1.b(ii)(a), c. and e *supra* at pages 26-41, 42-44.)

Finally, the Act requires that the Commission “shall take into account customer impacts when establishing” delivery services charges. (220 ILCS 16-108(d).) REACT witness Mr. Fults testified that even with ComEd’s claimed “moderation,” there would be extremely high-dollar impact on the Extra Large Load and High Voltage customers (See REACT Ex. 4.0 at 2:27-31, 6:116-10:206; *see also* REACT Ex. 1.0C at 22:565-25:611 (discussing rate impact before ComEd adjustments in rebuttal testimony).) ComEd’s proposed “moderated” increases range from **more than \$460,000 per customer per year**, depending on load size, for the over-10 MW High Voltage customers to **over \$1.875 million per year per customer**, depending on load size, for the Extra Large Load customer class customers, when compared to the cost-based rates established in ComEd’s 2005 Rate Case, ICC Docket No. 05-0597. (See Section VII.B *supra* at pages 19-21.) Thus, to the extent that the Commission imposes any increase beyond the system average on the over-10 MW customer classes, the Commission should take all possible steps to minimize the dollar impact upon those customers.

VIII.

RATE DESIGN

A. Overview

ComEd’s proposed rate design for the over-10 MW customer classes is based on an improper allocation of costs for distribution system assets which customers in those classes

rarely (if ever) use. ComEd's proposed rate design for those classes is based upon the same deeply flawed ECOSS that the Commission previously strongly criticized as simply not reflecting cost causation principles. As a result, consistent with its Orders in the 2007 Rate Case and Special Investigation Proceeding, the Commission should compel ComEd to further investigate the distribution system assets serving these customers and charge the class its fair share for those distribution system assets. Unless and until ComEd provides sufficient cost causation information to demonstrate that its rates are compliant with the Act and prior Commission Orders, the Commission should not allow ComEd to raise the largest customers' rates beyond the system average.

In addition to the problems with ComEd's proposed increases in delivery service rates, the Commission should also prevent ComEd from harming ratepayers through changing the *status quo* for collecting the Illinois Electricity Distribution Tax and maintaining the same, unsupervised approach to Distribution Loss Factors ("DLFs"). Regarding Illinois Electricity Distribution Tax, the harms and divorce from cost causation resulting from to changing assessment of the Tax far outweigh any convenience ComEd would gain. Regarding DLFs, although REACT does not oppose ComEd's ultimate proposed Distribution Loss Factors, the wild fluctuations since the 2005 Rate Case -- and even within the present case -- counsels for greater Commission oversight of the process. As a result, ComEd should recalculate the distribution loss factor once a year to prevent large increases and decreases -- both of which happened in ComEd's own studies within the present rate case.

B. Uncontested Issues

The relevant uncontested issues are set for the Section VII.B. ("Cost of Service and Allocation Issues - Uncontested Issues") at pages 19 to 21 and fully incorporated herein.

C. Potentially Contested Issues

3. Class Definitions

**b. New Primary Voltage Delivery
Class vs Primary Subclass Charges**

REACT strongly cautions against accepting creation of a primary class or primary subclasses as a final step or as a substitute for a study of delivery system assets serving the over-10 MW customer classes. A complete discussion of REACT's position can be found in Section VII.C.1.a(ii) *supra* at pages 24-26.

4. Non-Residential

(a) Movement Toward ECOSS Rates

(i) Extra Large Load and High Voltage Customer Classes

The Commission should not move the over-10 MW customer classes toward ComEd's flawed, non-reflective of cost-causation ECOSS. Simply put, it makes no sense to move further toward the ECOSS that the Commission has consistently criticized in the last two proceedings, and that REACT has demonstrated in the present proceeding does not reflect cost causation for the over-10 MW customer classes.

The Act requires nothing less than cost based rates that reflect "the facilities and services associated with such costs." (220 ILCS 5/16-108(c).) REACT incorporates by reference the legal arguments set forth in Sections I.C.1.a. and VII.D *supra* at pages 11 to 14 and 62 to 64. ComEd has faced strong and consistent criticism showing that its ECOSS fails to yield cost based rates for the over-10 MW customer classes. The Commission has made it clear in both the 2007 Rate Case Order and the Special Investigation Proceeding Order that ComEd's rates must be cost based, and that ComEd's ECOSS methodology improperly allocates costs to ComEd customer classes containing its largest customers. (*See, e.g.*, ICC Docket No. 07-0566, Final

Order dated September 10, 2008, at 212-213; ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 38-40.) REACT has presented information, in the form of the pre-filed testimony of REACT witness Mr. Terhune, cross-examination admissions and exhibits, and REACT Verified Offer of Proof (and attachments) that firmly establishes that ComEd's rates are not cost based. (*See* REACT Ex. 6.0C at 5:100-115, 8:180-20:446; Tr. 383:2-385:19, 397:7-400:1, 403:11-405:19, 1233:15-1242:2; REACT Verified Offer of Proof at 5-7; REACT Ex. 6.5.)

The Commission should reject any increase in rates based on ComEd's ECOSS for the over-10 MW customer classes unless and until ComEd provides sufficient information and/or a study that verifiably evaluates the distribution system assets serving those classes. (*See* REACT Ex. 1.0C at 12:264-20:521, 22:545-554, REACT Ex. 3.0C at 8:157-177, REACT Ex. 4.0 at 11:229-22:241; REACT Ex. 6.0C at 30:693-32:757.) Such a study is a necessary prerequisite because ComEd's rates must be "cost based," meaning they must correlate to "the facilities and services associated with such costs." (220 ILCS 5/16-108(c).)

REACT is not the only party to challenge the cost basis of ComEd's ECOSS. For example, IIEC witness Mr. Stowe presents an argument similar to what Mr. Terhune presented in his pre-filed direct testimony, seeking exclusion of all single-/two-phase wires from the Extra Large Load customer class's allocation. (*See, e.g.*, IIEC Ex. 3.0 at 12:280-13:304, 14:317-15:323; *see also* REACT Ex. 3.0C at 16:393-396.) CTA and Metra likewise criticize ComEd for assigning to the Railroad customer class costs associated with facilities that they cannot use, given their delivery services configuration. (*See, e.g.*, CTA/Metra Ex. 1.0 at 19:438-23:522.) Although REACT witness Mr. Terhune has evolved his understanding (reflected in pre-filed rebuttal testimony and in REACT Verified Offer of Proof) that the Extra Large Load customer class has some non-zero use of the single-/two-phase system, the essential concept -- the use is

minimal -- is the same. (See REACT Ex. 6.0C at 5:119-126; REACT Ex. 6.5.) As Mr. Stowe demonstrated, the fact that a customer is metered at a certain voltage and/or phase is *not* necessarily evidence that the customer burdens that system, because it could have on-site transformation to that level. (IIEC Ex. 3.0 at 17:372-387.)

ComEd asserts that its ECOSS accurately reflects cost causation of the distribution system assets serving the over-10 MW customer class, or at least “based upon the uniform system of accounts.” (E.g., Tr. 2143:18-22, 2144:10-16.) Although REACT does not dispute that ComEd has applied allocators to USOA accounts, REACT has rebutted that ComEd’s allocations are cost based from two angles:

First, based on a high-level analysis, ComEd charges the over-10 MW customer classes for distribution system assets that members of those classes either do not use or use far less than assumed by ComEd’s ECOSS. Although the effects were pointed out in previous Commission Orders, the engineering reasoning was described by REACT witness Mr. Terhune. (See, e.g., REACT Ex. 6.0C at 8:180-20:446.)

Second, hard evidence revealed categorical flaws in ComEd’s ECOSS allocation. REACT confirmed that the Extra Large Load customer class does not use certain systems of distribution system assets (such as the single-/two-phase systems or the 4 kV system) nearly to the degree to which ComEd allocates those assets based upon the related Uniform System of Accounts account. (Compare REACT Ex. 6.0C at 13:283-296, 14:318-15:322, 16:346-357 (setting out ComEd allocators and high-level criticisms) with REACT Ex. 6.5 and REACT Verified Offer of Proof at 6-7 (noting that capacity of single-/two-phase distribution system assets only 0.2% of total class capacity, and 4 kV distribution system assets only 0.7% of total class capacity).)

In light of the voluminous evidence in the instant proceeding indicting ComEd's proposed ECOSS, the Commission should reject ComEd's contention that its ECOSS reflects cost causation for the over-10 MW customer classes.

(b) Allocating Secondary Costs Among Customer Classes

Consistent with the Act's mandate, secondary costs -- like all distribution costs -- should be borne by the classes that cause those costs. (*See* 220 ILCS 5/16-108(c).)

REACT witness Mr. Terhune testified that secondary costs, like all costs, should be allocated to each customer class proportionate with each class' causation of such costs. (*See, e.g.,* REACT Ex. 6.0C at 15:333-18:391; *see also* REACT Ex. 3.0C at 18:446-447, 19:456-458.) The Extra Large Load customer class uses a very low level of these distribution system assets, and many (if not virtually all) of these distribution system assets are taken out of rate base due to payments under Rider NS by individual customers. (*See, e.g.,* REACT Ex. 6.0C at 15:333-18:391; REACT Ex. 3.0C at 17:416-18:438.) IIEC witness Mr. Stowe further illustrates this problem, noting in a hypothetical that Extra Large Load class customers with a secondary service point may actually make zero use of the system, because all of the secondary equipment is on site, and thus covered by Rider NS. (*See* IIEC Ex. 3.0 at 17:372-387.) As a result, ComEd should conduct the study to determine the impact of the Extra Large Load customer class on the secondary system (removing Rider NS-funded distribution system assets) and allocate based on that finding to properly reflect cost causation. (*See* REACT Ex. 6.0C at 40:945-41:958; *see also* Section VII.C.1.c *supra* at pages 31-41.) As Mr. Stowe points out in his testimony, the impact will likely be *de minimis*, even if certain proxies (such as metered demand at secondary service levels) end up being non-negligible. (*See* IIEC Ex. 3.0 at 17:372-387.)

ComEd appears to be aware of this issue, and to the extent that it keeps its allocator NCP-SEC at a zero allocation to the largest customers, it does not over-allocate secondary lines to

those classes. (*See* ComEd Ex. 75.1, at 76 (NCP-SEC allocator in final proposed ECOSSE).) The Commission should ensure that the same is true for all secondary distribution system assets, and order a study to determine the secondary costs that the Extra Large Load customer class causes.

5. Collection of Illinois Electricity Distribution Tax

ComEd has not made a sufficient showing that its proposed change to how it bills and collects the Illinois Electricity Distribution Tax outweighs the harms of changing to a per kWh charge for ComEd's largest customers. A discussion of REACT's position can be found in Section VII.C.1.h *supra* at pages 44 to 46 and is incorporated herein.

6. Distribution Loss Factors

Although REACT supports ComEd's final proposed Distribution Loss Factors ("DLFs") for purposes of setting the rates in this proceeding, the Commission also should require ComEd to update its Distribution Loss Study annually. DLFs are a reflection of the estimated electricity lost in transit from entry into ComEd's distribution system through delivery to the customer. (REACT Ex. 1.0C at 31:741-747.) In essence, DLFs operate as a tax on purchased electricity, requiring each end user to purchase an additional quantity of electricity in proportion to the DLF to account for electricity lost within the distribution system. (*See id.* at 31:750-757.) For very high-volume purchasers of electricity, what appear to be small changes in the DLFs -- such as ComEd's initial proposed 4% increase -- can have a substantial impact upon a customer's bill. (*See id.* at 33:782-785.) It is critical for high-volume users, such as the customer members of REACT, that the DLFs are not artificially high.

Although ComEd's final proposal is acceptable, ComEd's initial proposed DLFs would have caused severe financial impacts. During the course of this proceeding, ComEd corrected and updated its Distribution Loss Study multiple times, significantly impacting the resulting DLFs. (*See, e.g.,* ComEd Ex. 34.1; ComEd Ex. 67.1R.; REACT Ex. 4.0 at 18:385-19:387,

20:409-410 (comparing DLFs from 2007, ComEd's initial filing, and ComEd's rebuttal testimony).) REACT agrees with ComEd's final DLFs and underlying study, as presented in the surrebuttal of Mr. Alongi and Mr. Born, respectively. (*See* ComEd Ex. 73.8; ComEd Ex. 67.1R.)

Nevertheless, the Commission should be concerned by the huge swing in ComEd's DLFs; the massive changes call into question the accuracy of the earlier studies from the 2007 ComEd Rate Case and demonstrate the need for additional oversight of the calculation of distribution losses. (*See* REACT Ex. 1.0C at 33:794-799; REACT 4.0 at 18:383-19:399, 19:404-20:408.) To remedy this situation, REACT respectfully requests that the Commission order ComEd to update its Distribution Loss Study to the Commission every year. (*See* REACT Ex. 4.0 at 20:422-423.) Although REACT expects the DLFs to fluctuate from year to year, the massive increases from the 2005 ComEd Rate Case to the DLFs initially proposed in the present case -- 15.78% for Extra Large Load, and 72.59% for over-10 MW High Voltage -- represent an enormous change that likely would not have even been proposed if there were proper annual oversight of the inputs to this charge. (*See* REACT Ex. 1.0C at 32:765-772; *see also* REACT Ex. 4.0 at 19:404-20:408.)

Despite the large fluctuations and subsequent substantial corrections, ComEd resisted REACT's suggestion for additional oversight. ComEd first tried to argue that updating the DLFs annually will affect wholesale energy markets, but appeared to abandon that argument after Mr. Fults clarified that REACT only is suggesting an update to DLFs, not Transmission Loss Factors. (*Compare* ComEd Ex. 49.0 at 50:1134-1147 *with* REACT Ex. 4.0 at 20:414-419.) On surrebuttal, ComEd argued that REACT's proposal would lead to "small changes in the value of DLFs" and would be overly complicated. (ComEd Ex. 73.0 2d Rev. at 40:898-903.) Although REACT agrees that there should be only small changes from year-to-year in the DLFs, ComEd's

own proposed increase of 72.59% over five years in the DLF for over-10 MW High Voltage customers belies ComEd's argument. (*See* REACT Ex. 1.0C at 32:765-772.) Because REACT has shown a substantial impact from leaving DLFs unsupervised between rate cases, and since ComEd has not rebutted the impact inaccurate DLFs can have upon customers, the Commission should adopt REACT's proposal to require ComEd to update its Distribution Loss Study and DLFs for the Commission annually.

10 Docket 08-0532 Compliance Issues

ComEd failed to fully comply with the Commission's directives contained in its Final Order in the Special Investigation Proceeding. A discussion of REACT's position can be found in Section VII.C.1.k *supra* at pages 59 to 61.

11. Other Issues

REACT renews its argument that ComEd has failed to produce all documents responsive to the ALJs' January 7, 2011 Ruling granting in part REACT's Motion to Compel. (*See* Tr. of January 7, 2011 Pre-Hearing Status, at 72:18-73:18.) The ALJs' Ruling directed "ComEd shall provide **all documents** pertinent to Rider NS concerning the extra large load customer build-outs." (*See* ComEd Response to ALJ-OTR Data Request 1 (quoting the transcript) (emphasis added).) Although ComEd has provided some responsive documents, which have been included in the evidentiary record as REACT Cross Ex. 25 (ComEd's Response to ALJ-OTR 1), ComEd's response is incomplete. ComEd should be required to provide a complete response.

As detailed in REACT's Verified Offer of Proof, ComEd is in possession of entire categories of additional documents that are responsive to the Ruling, and that are relevant to the ultimate issues in the present proceeding. (*See* REACT Verified Offer of Proof at 3-5.) Specifically, ComEd has Sketches, Service Estimate Requests and System Maps that ComEd failed to produce in response to the Ruling. (*See id.*) The absence of these documents prevented

REACT from making additional, detailed arguments related to the distribution system assets serving the Extra Large Load customer class. (*See id.*) However, as the Offer of Proof details, the absence of the additional responsive documents did not impact Mr. Terhune's analysis set forth in REACT Ex. 6.5, or his conclusions about the inappropriateness of NCP or CP allocation for 4 kV or single-/two-phase primary conductor and 4 kV assets generally. (*See id.* at 5-7.)

Furthermore, on cross examination, ComEd witness Mr. Alongi admitted (without having reviewed REACT Ex. 6.5 or REACT Verified Offer of Proof) that he would have undertaken the exact same steps as Mr. Terhune did to analyze the data contained in ALJ-OTR 1. (*See* Tr. 2173:4-20; *compare* Tr. 2180:22-2181:8, 2182:7-2183:6 *with* REACT Verified Offer of Proof at 5-6; Affidavit of Harry L. Terhune in Support of REACT Verified Offer of Proof at ¶¶ 14, 16-17.) As a result, while REACT renews its request to have REACT Ex. 6.5 and Mr. Terhune's analysis admitted into the record, even if the Commission does not allow that additional evidence into the record in the form that it was presented, there is an independent basis for the Commission to accept the analysis contained therein, and draw conclusions from that analysis.

Finally, there was some suggestion by ComEd's counsel that ComEd's response to ALJ-OTR 1 did *not* provide a complete picture of the Rider NS assets serving the Extra Large Load customer class. (*See* Tr. 2179:15-2180:20; *but see* Tr. 1682:5-13 (counsel for ComEd stating "we have provided the information we have").) The Commission should not allow ComEd to have it both ways. Given ComEd's assertion that it complied fully with the Ruling, ComEd should not be allowed to assert that there are Rider NS assets not reflected in ComEd's Response to ALJ-OTR 1 and Mr. Terhune's analysis thereof in REACT Ex. 6.5.

REACT respectfully requests that ComEd be compelled to provide a complete response to the ALJs' Ruling and admit into the evidentiary record the information contained in the Offer of Proof.

XI. CONCLUSION

REACT respectfully requests that the Commission enter an Order:

1. Rejecting ComEd's latest unjustified, disproportionate request for rate increases to ComEd's over-10 MW customer classes, and assign, at most, the system-average rate increase to those customer classes;
2. Putting an end to ComEd's practice of allocating costs to the over-10 MW customer classes that they did not cause, by ordering a study of distribution system assets serving these classes, from which ComEd can design cost based rates compliant with the Act;
3. Directing ComEd to use the Allocation Study with Mr. Merola's proposed adjustments to the cost allocators, to allocate ComEd's Customer Care Costs;
4. Denying ComEd's request to alter the way it charges its customers for the Illinois Electricity Distribution Tax;
5. Requiring ComEd to update its distribution loss factor annually; and
6. Granting any additional relief that the Commission determines to be in the interests of justice.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE
ALLOCATION OF COSTS TOGETHER**

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VERIFICATION

Christopher J. Townsend, being first duly sworn, on oath deposes and says that he is one of the attorneys for the Coalition to Request Equitable Allocation of Costs Together, that he has read the above and foregoing document, knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Subscribed and sworn to me
this 10th day of February, 2011.

Christopher J. Townsend
